

LEGISLATIVE IMPACTS OF REFORMS AND LIMITATIONS PLACED ON STATE
LEGISLATURES

by
Tyler H. Aiken

A thesis submitted to Johns Hopkins University in conformity with the requirements for
the degree of Master of Arts in Government

Baltimore, Maryland
August 2014

© 2014 Tyler H. Aiken
All Rights Reserved

ABSTRACT

This thesis addresses reforms and measures targeted at the function of state legislatures, and argues how such reforms often have unanticipated impacts. This topic was chosen because as reforms and limitations such as the ones outlined here are considered for state legislatures in the future, it is important to better understand how similar measures levied in the past have hindered or benefited state legislatures. Chapter One analyzes term limits on state legislatures and how this has affected the balance of power between state legislatures and governors. Chapter Two studies the 17th Amendment to the U.S. Constitution, looking at how current state legislators feel their function and relation to constituents might have been limited with its ratification. Chapter Three examines the modern age of ballot measures, and how they might inhibit the role of state legislatures. Chapter One determined that term limits do create a shift in legislative capabilities and function away from state legislatures and towards governors. It does not however appear to impact a states economy in any discernable manner. Chapter Two concluded that the 17th Amendment inadvertently creates a safeguard for state legislatures to operate without the influence of special interests resembling that on the Federal level. And Chapter Three determined that ballot measures place considerable legislative control in the hands of a citizenry that is often unfamiliar with the far-reaching impact such proposals can have. Additionally, such proposals often create policies that state legislatures must contend with and address in subsequent legislative sessions. This research is important because it shows how reforms and measures placed on state legislatures can have unforeseen results that are often harmful to the legislative representation of a state's citizens. This thesis portfolio makes a contribution by

illustrating how such reforms must be studied thoroughly prior to their implementation and throughout their use, and could better inform legislators and constituents as they consider such alterations to their state legislatures.

Reviewers: Professor Dale Medearis
Professor Mark Luckner

ACKNOWLEDGEMENTS

This thesis is dedicated to my amazing family. Your love and support over the years has not only made me a better student, but a better person as well. I'm so fortunate to have parents, a brother, grandparents, and an extended family like you in my life.

TABLE OF CONTENTS

PORTFOLIO INTRODUCTION.....	1
Different Types of Legislatures.....	2
Chapter One – The Influence of Term Limits on States’ Executive-Legislative Relationship.....	6
Chapter Two –Effect of the 17 th Amendment on State Legislatures.....	7
Chapter Three – The Impact of Initiatives and Referendums on State Legislatures.....	9
Summary.....	10
CHAPTER 1: THE INFLUENCE OF TERM LIMITS ON STATES’ EXECUTIVE- LEGISLATIVE RELATIONSHIP.....	12
Introduction.....	12
Term Limits in U.S. State Legislatures.....	12
Previous Research on Term Limits.....	15
Evidence and Methods of Analysis.....	20
Results.....	21
Conclusion.....	34
CHAPTER 2: EFFECT OF THE 17 TH AMENDMENT ON STATE LEGISLATURES.....	38
Introduction.....	38
Background and Motivation.....	39
Previous Research on the 17 th Amendment.....	43
Evidence and Methods of Analysis.....	47
Results.....	48
Conclusion.....	56

CHAPTER 3: THE IMPACT OF INITIATIVES AND REFERENDUMS ON STATE LEGISLATURES.....	59
Introduction.....	59
Types of Ballot Measures.....	60
Federalists v Anti-Federalists.....	63
History of Ballot Measures.....	65
Previous Research on Initiatives and Referendums.....	68
Evidence and Methods of Analysis.....	72
Results.....	73
Conclusion.....	81
PORTFOLIO CONCLUSION.....	83
Chapter 1 – Findings and Suggestions for Future Studies on Term Limits.....	85
Chapter 2 – Findings and Suggestions for Future Studies on the 17 th Amendment.....	87
Chapter 3 – Findings and Suggestions for Future Studies on Ballot Measures.....	89
Recommendations.....	92
BIBLIOGRAPHY.....	94
Introduction References.....	94
Chapter 1 References.....	95
Chapter 2 References.....	97
Chapter 3 References.....	99
Conclusion References.....	101
CURRICULUM VITAE.....	103

Figures

Figure 1: Full-Time, Hybrid and Part-Time Legislatures.....	4
Figure 2: State Unemployment Rates.....	32
Figure 3: Home Ownership Rate.....	34
Figure 4: Ratification of the 17 th Amendment by States.....	42

Tables

Table 1: State Legislative Term Limits.....	13
Table 2: State Population.....	28
Table 3: State Bond Debt Issued.....	29
Table 4: State Bond Debt Outstanding.....	30
Table 5: Demographic Comparison for North Dakota and South Dakota.....	33
Table 6: State Initiative and Referendum Provisions.....	67
Table 7: Support and Opposition in Initiatives.....	73
Table 8: Use and Passage Rates of Initiatives.....	75

Portfolio Introduction

State legislatures operate within a sphere of limitations. Limited time to meet, limited resources at their disposal, low salaries and restrictive rules compound the already complicated task of being a productive legislature. Additionally, legislatures must struggle with the same type of polarizing politics and partisan bickering that plagues the U.S. Congress. Issues like gerrymandering, heated debates over social issues and state campaign finance regulations among others have taken the place of rampant corruption allegations that plagued state legislatures in the late 19th to early 20th century, and continued the century old withdrawal exhibited between state populations and their state legislatures.

Arizona Senate Bill 1062 is an example of this disconnect between constituents and representatives. This state legislation received a great deal of national attention in early 2014 for the potential impact in allowing businesses in Arizona to use the Religious Freedom Restoration Act as a defense for a refusal of service or discrimination because of someone's sexual orientation or religious beliefs.¹ The bill passed the Arizona Republican-controlled Senate on February 19, 2014, and the Arizona House on February 20th. The vote in both houses was down party lines, and immediately received much public criticism from both Republican and Democrat constituents across Arizona. In the end Governor Jan Brewer, who is known for her extremely conservative stance on social issues, vetoed the bill, calling it a "broadly worded bill that could result in unintended and negative consequences."² The bill's Republican opposition included both of

¹ Cindy Carcamo, "Arizona Gov. Jan Brewer Vetoes So-Called Anti-Gay Bill," LA Times, February 26, 2014, <http://articles.latimes.com/2014/feb/26/nation/la-na-nn-arizona-gay-brewer-20140226>.

² Catherine E. Schoichet, Halimah Abdullah, "Arizona Gov. Jan Brewer vetoes controversial anti-gay bill, SB 1062," CNN Politics, February 26, 2014, <http://www.cnn.com/2014/02/26/politics/arizona-brewer-bill/>.

Arizona's Republican U.S. Senators, John McCain and Jeff Flake, and former presidential candidate Mitt Romney.³ Former Arizona Governor, Janet Napolitano explained that had the bill come across her desk she too would have utilized the veto, saying, "In my view knowing the state as well as I do, it just doesn't represent what Arizona is. And it's just an example, once again, of the state legislature being out of touch with the state, overall."⁴

Similar scenarios have created an extensive list of claims throughout history describing state legislatures as detached and aloof to the priorities of their constituencies, essentially incapable of reflecting the will of the people who elected them in the first place. There have been several attempts by the people and various levels of government to counter those sentiments. Through various movements, reforms and legislation, measures have been implemented to limit the authority and corruption of state legislatures while increasing the authority, and in many cases direct representation controlled by the people of each state.

Different Types of Legislatures

The fifty state legislatures across the United States are made up of 7,383 elected representatives who craft policies, write legislation and perform a wide array of other activities on behalf of the constituencies that elected them.⁵ Congressional scholars vary in their exact descriptions of the responsibilities and duties of state legislatures, but they generally include representation, lawmaking, appropriations/budgeting, public education

³ Carcamo, "Arizona Gov. Jan Brewer Vetoes So-Called Anti-Gay Bill."

⁴ Mike Levine, "Ex-Arizona Gov. Janet Napolitano: State's Legislature 'Out of Touch,'" ABC News, February 26, 2014, <http://abcnews.go.com/blogs/politics/2014/02/ex-arizona-gov-janet-napolitano-states-legislature-out-of-touch/>

⁵ National Conference of State Legislatures, "Number of Legislators and Length of Terms in Years," 2013, <http://www.ncsl.org/research/about-state-legislatures/number-of-legislators-and-length-of-terms.aspx>.

and serving as a check and balance to the executive branch.⁶ The capacity of each legislator to achieve these objectives can vary depending on a state's particular type of legislature. Being a state legislator does not necessarily translate into a full-time job, and in many situations is far from it.

The National Conference of State Legislatures (NCSL) groups legislatures into three categories based on whether they function as a full or part-time legislature. The first type is Green legislatures. These are essentially full-time legislatures, whose representatives are well paid and treat the position as their only job. For example, New York state legislators have a base salary of approximately \$79,500.⁷ Legislators in these states have much larger populations in their districts, and have larger staffs who work on legislative and constituent issues. Their legislative sessions are much longer and resemble the operation of the U.S. Congress much more than other states. California, New York and Pennsylvania all qualify as Green legislatures.⁸

The next classification is Gray legislatures, or hybrids. These bodies generally spend half to two-thirds of a session convened. Members have considerably smaller salaries and usually have other sources of income to make a living. Their staffs are also defined as medium in size, when compared to all state legislatures.⁹ The North Carolina General Assembly is an example of a Gray legislature. Their current session was convened in January 2013 and will conclude in December 2014. The General Assembly meets during that period in two forms of session. The first is the regular or long session,

⁶ Thomas H. Little, David B. Ogle, "The Legislative Branch of State Government: People, Process, and Politics," ABC-CLIO, 2006, Pg. 36.

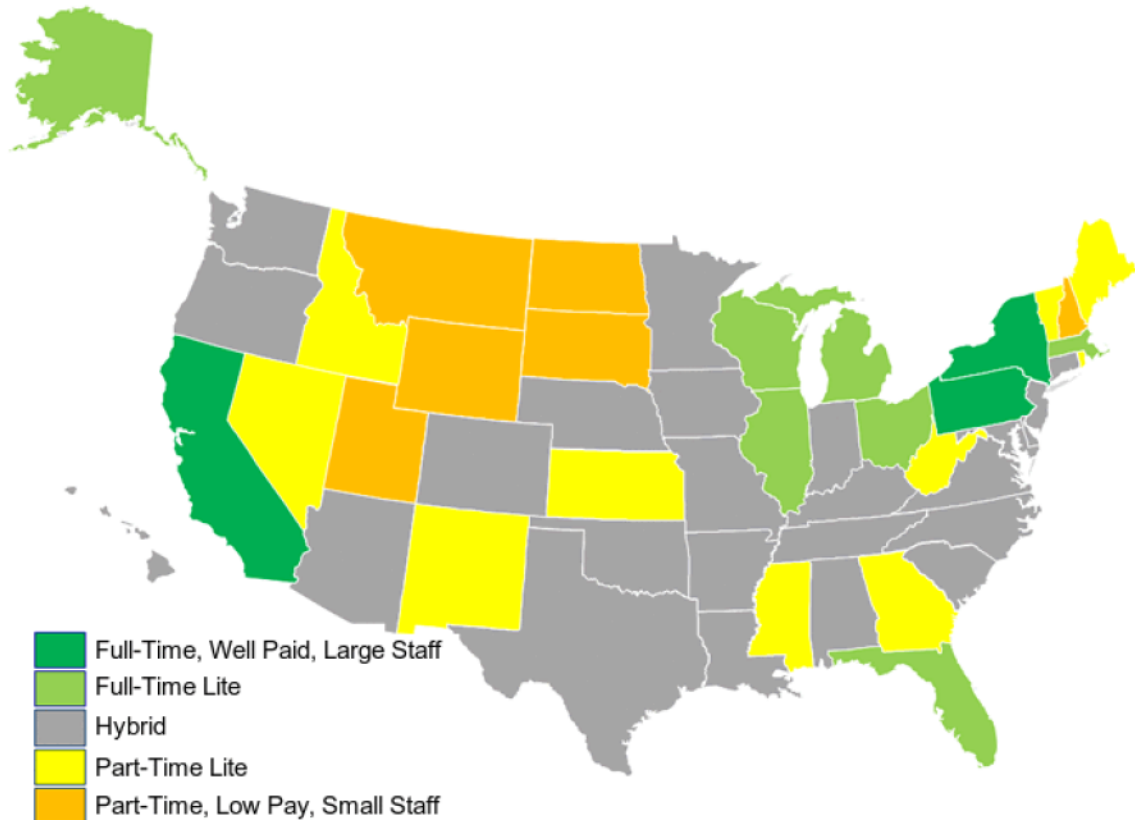
⁷ Danny Hakim, "New York Legislators Pushing to Raise Their Pay," The New York Times, February 10, 2008, <http://www.nytimes.com/2008/02/10/nyregion/10raise.html>.

⁸ National Conference of State Legislatures, "Full-And Part-Time Legislatures," 2009, <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>

⁹ National Conference of State Legislatures, "Full-And Part-Time Legislatures."

which begins in January when the session was convened and typically lasts for 6 months. The second session is referred to as the short session, and usually meets the second year of the session for six weeks.¹⁰ Members of the North Carolina General Assembly receive an annual salary of \$13,951.¹¹

Figure 1 - Full-Time, Hybrid and Part-Time Legislatures¹²



The third group is referred to as Gold legislatures. These legislators receive little compensation for their work in their state's congress, almost assuredly having another source of income. Scholars refer to these representatives as traditional or citizen legislatures, representing their districts for a short period of time and then returning to their communities and regular professions. These types of legislatures are most often

¹⁰ North Carolina General Assembly, "When is the General Assembly in Session?" <http://www.ncleg.net/gascripts/Help/KnowledgeBase/viewItem.pl?nID=35>

¹¹ North Carolina General Assembly, "How Much Do Legislators Get Paid?" <http://www.ncleg.net/ncgainfo/educational/funfacts/legpay.html>.

¹² National Conference of State Legislatures, "Full-And Part-Time Legislatures."

found in rural states with small populations and have considerably smaller staffs.¹³ Utah for example, has a constitutional mandate that limits their annual General Session meetings to only forty-five calendar days.¹⁴ Utah's legislators are also only paid around \$130 per day in salary.¹⁵

It is important to note that even within these three classifications of legislatures, between states there can be considerable discrepancies in session lengths, legislator compensation, and staff size. Nebraska does not even have a bicameral legislature with a Senate and House like the other forty-nine states. Their legislature is unicameral, meeting for ninety working days in odd-numbered years and sixty working days in even-numbered years.¹⁶ However, state representatives experience a much different type of affiliation with their constituents than their federal counterparts. They spend much more time in their home districts when compared with members of the U.S. Congress, and can create closer relationship with the individuals they represent. They are also in a constant cycle of reelection, with most state House terms being two years, and State Senates being either two or four.¹⁷ While each of the fifty legislatures are considerably different in appearance, many of the issues and debates that have come through their chambers throughout history are similar, especially in terms of political partisanship and failure to enact changes and claims of corruption. These similarities have led to reforms and measures being enacted which have changed the function of state legislatures across the nation and have launched similar calls for change on the federal level.

¹³ National Conference of State Legislatures, "Full-And Part-Time Legislatures."

¹⁴ National Conference of State Legislatures, "Legislative Session Length," <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx>

¹⁵ Bob Bernick Jr., "7.7% Pay Hike is Pushed for Utah's Legislators," Deseret News, November 9, 2007, <http://www.deseretnews.com/article/695226164/77-pay-hike-is-pushed-for-Utahs-legislators.html?pg=all>.

¹⁶ National Conference of State Legislatures, "Legislative Session Length,"

¹⁷ National Conference of State Legislatures, "Number of Legislators and Length of Terms in Years."

This thesis will examine three such reforms, and their impact on state legislatures. The overall goal of this research will be to explore whether these changes have resulted in the desired effect or whether they have negatively impacted the role and function of state legislatures. While changes to assemblies, representation or other matters may, on the surface, appear to fix one issue, this study will examine if by altering how state governments operate they potentially are doing greater harm than good. The conclusion will summarize the findings of all three chapters, identify any similarities or differences that exist, and make recommendations for how such movements should be approached and dealt with by legislatures and the citizenry.

Chapter One – The Influence of Term Limits on States’ Executive-Legislative Relationship

The first chapter examines term limit’s effects on state legislators, with a heightened focus on how they affect a state governor’s legislative impact. The question being addressed asks: Do term limits on state legislators have an effect on the balance of power between governors and legislatures, and does this affect these state’s economies? Term limits rose in popularity in the early 1990s, as a major citizen-led effort to address rampant incumbency in state legislatures across the United States. While existing research focuses on their impact on state legislatures as a whole, there is little attention given on how they actually increase the state’s executive branch’s authority, and what impact that could have on a specific state’s well-being.

This study draws upon previous research to highlight the clear decline in experience and political influence that state representatives have on the legislative process when compared to their governor, essentially eliminating a balanced form of state level government. Term limits prevent legislators from gaining the institutional

knowledge necessary to reach the same leadership capacity as their counterparts in states without them. This paper identifies this as creating a vulnerability for legislators, making them much more reliant on professional staffers and lobbyists, and giving executive staffers a clear advantage in pushing for certain legislative policies.

This chapter also looks at the fifteen states that currently have term limits, and analyzes their economic development to see if any potential fluctuations have resulted because of term limits. It is hypothesized that with governors having more control over the legislative process, a variation in economic development of some type should be shown at the point in time when term limits were enacted. The budget process for example, could illustrate governors influencing legislatures to enact proposals that differ considerably from trends in the years prior to term limits. This difference would be illustrated in economic indicators including unemployment and state population growth. The same could be seen when examining a state without term limits to a demographically similar one that does. This comparison will illustrate the various impacts term limits have on numerous components of an economy, versus how they would appear had the term limits not been implemented.

Chapter Two –Effect of the 17th Amendment on State Legislatures

Chapter two shifts focus to the 17th Amendment of the U.S. Constitution. This measure, implemented in 1913, mandated that all U.S. senators be elected by a popular vote. Prior to the amendment however, state legislatures were tasked with electing their federal representatives to the U.S. Senate.¹⁸ This chapter answers the question: How do current state legislators view the 17th Amendment and the modern debate over its reform

¹⁸ National Archives, “17th Amendment to the U.S. Constitution: Direct Election of U.S. Senators,” <http://www.archives.gov/legislative/features/17th-amendment/>.

or repeal? Implemented as a way to prevent individuals from essentially bribing their way to the U.S. Senate and the ineffectiveness of state legislatures in filling vacancies, the 17th Amendment removed a great deal of control and federal power away from state legislatures. This research attempts to see if this hurts the amount of involvement had by the citizenry with their state legislatures in anyway. The hypothesis of this section is that the removal of this authority has greatly hindered the role of state legislators, essentially removing their influence on policy at the federal level. This power limitation is likely to have had a negative influence on the attentiveness people exhibit toward their state legislatures, and in the opinions of state legislators with regards to their function.

Interviews conducted in this research with current members of state legislatures allow for a more modern view of the 17th Amendment, and how it is perceived by those it limits a century later. These conversations have helped to develop a realization of how the 17th Amendment is often viewed today as a buffer between heightened special interest groups and campaign finance issues and state legislators. Many state representatives feel this allows them to avoid many obstructive aspects of national politics allowing for better or worse, things to actually get done on the state level. These interviews reveal how both Democrats and Republicans in state legislators are generally united in their view of the 17th Amendment.

This paper builds upon previous research to further the understanding of how current political figures on all levels of government perceive the amendment and its impact. This analysis will also highlight differences of opinion that might exist between federal and state legislators and political figures. It will emphasize variations between those it directly affects, and others who might advocate reform or changes for solely

political purposes. This research reveals that the only individuals who adamantly support overturning the Amendment are those on the extreme right of the political spectrum. These individuals view the 17th Amendment as a way to increase the likelihood that the U.S. Senate resembles traditionally conservative state legislatures.

Chapter Three – The Impact of Initiatives and Referendums on State Legislatures

The final chapter examines the evolution of ballot initiatives and referendums over time and their relationship with state legislatures in the modern era. The research in this section answers the question: Do ballot initiatives and referendums hurt or inhibit the role of state legislatures? Much of the prior information on ballot initiatives and their interesting history in the states establishes two distinct fields of opinion on the matter. The first views the modern use of ballot measures as a lucrative political industry by which the needs of special or corporate interests can easily be promoted and instituted as law without the approval of state legislatures. This group also views the measures as a tool, utilizing the public who may not have a solid understanding of the various matters at hand. The second field of thought reveals initiatives and referendums as a means to circumvent the ineffectiveness and hesitancy exhibited by modern state legislatures. Those of this opinion regard the process as it was in the Progressive era, a means to much needed political reform against a legislative body incapable of making necessary changes. However, it could be argued that in its modern form, ballot measures have to deal much more with deadlock over partisan politics, rather than attempts to keep a specific status quo that existed in the 19th and early 20th centuries.

Chapter three builds upon previous research and examination of numerous ballot initiatives and referendums to conclude that the role of money in ballot measures has not

changed over time. The initiative industry seems to be much more impacted by the vulnerability of the voting public to act upon opinionated views and strong rhetoric, rather than seek out facts. This has led to a point at which state legislatures must contend with the impact of ballot measures on policy issues unforeseen by the citizenry who voted for the measures. This has been the case with multiple states across the nation, where ballot measures have crippled state budgets, overtaxed businesses, and limited individuals' access to things like healthcare benefits. Furthermore, the research concludes that ballot measures create a path via referendums to circumvent a system of check and government oversight, by going straight to a public who can be persuaded rather than a governor's desk for a signature or veto.

Chapter three also illustrates how ballot measures waste limited time and resources of state legislatures. An interview with Missouri State Representative Stephen Webber helps explain the aftermath of such ballot measures once they go into effect, and steps that, in order to alter their impact, must be taken both during the current and subsequent legislative session. Not only does it appear that ballot measures intervene in the role of state legislatures by impacting their capability to enact policies, they also appear to produce additional policy elements that would otherwise not be problematic.

Summary

This thesis contends that while reforms such as these do not always negatively impact state legislatures, in some cases the effect can be harmful to a legislature's ability to effectively carry out their job. Some movements, while limiting the authority and power of state legislatures, do allow them to more effectively translate the wishes and

needs of the people into public policy.¹⁹ Reforms and policy changes similar to term limits, the 17th Amendment, and ballot measures need to be carefully studied both prior to their implementation, and throughout their existence. Changes in ideology, technology and other functions of government can influence the effectiveness of such measures, ultimately limiting the ability of state legislators to represent the interests of their constituents. As hinted at by Thomas Mann and Norman Ornstein, limiting the function of state legislatures does not always usher in a new era of citizen legislators.²⁰

¹⁹ Todd Donovan, Christopher Mooney, Daniel Smith, "State and Local Politics." Wadsworth Cengage Learning, 2011, Pg. 230.

²⁰ Thomas E. Mann, Norman J. Ornstein, "It's Even Worse Than It Looks: How the American Constitutional System Collided With the New Politics of Extremism," Basic Books, 2012, Pg. 126.

Chapter 1

The Influence of Term Limits on States' Executive-Legislative Relationship

Introduction

This paper will explore and examine the question: Do term limits on state legislators have an effect on the balance of power between governors and legislatures, and does this affect these states' economies? Research within this study will consist of an historical analysis of bills and legislation submitted and passed by these states' legislative bodies, as well as data on economic information pertaining to the development of both term-limited states and those without term limits. This study will examine the impact of term limits by evaluating how states with term-limited legislatures compare to themselves prior to their implementation and to other states with similar demographic features (i.e. population, income, education, racial makeup). After examining the role that term limits play on the relationship that exists between legislatures and governors, this paper will examine any correlation between a stronger executive branch and any economic changes these states' experience. It is hypothesized that term limits place state legislatures at a disadvantage with respect to gubernatorial authority and experience, and this leads to negative economic consequences within the state.

Term Limits in U.S. State Legislatures

Beginning in the early 1990s, the United States saw a major citizen-led effort to combat what had become known as "Congressional Homesteading." This trend consisted of members from state legislatures and the United States Congress winning re-election effortlessly. An effort labeled the Term-Limits Movement developed, in which citizen initiatives and referendums concerning term limits were forced upon their state

legislatures.²¹ As a result of this movement, which some argue was “the most significant state legislative reform movement in a generation,” twenty-one states adopted term limits for their legislatures.²² Six of those states’ term limits were later struck down by state

Table 1 - State Legislative Term Limits²³

State	Year Enacted	Year Impact	% Voted Yes
Arizona	1992	2000	74.2
Arkansas	1992	1998 House, 2000 Senate	59.9
California	1990	1996 House, 1998 Senate	52.2
Colorado	1990	1998	71.1
Florida	1992	2000	76.8
Louisiana	1995	2007	76.0
Maine	1993	1996	67.6
Michigan	1992	1998 House, 2002 Senate	58.8
Missouri	1992	2002	75.0
Montana	1992	2000	67.0
Nebraska	2000	n/a House, 2006 Senate	56.0
Nevada	1996	2010	70.4
Ohio	1992	2000	68.4
Oklahoma	1990	2004	67.3
South Dakota	1992	2000	63.3

legislatures or state supreme courts, leaving fifteen states currently that retain term limits for their legislators.²⁴ The ballot measures in these states received overwhelming support from the voting public, as seen in column four of Table 1. Today term limits remain popular, with a recent Gallup poll from January 2013 showing that 75% of the general public even support term limits on federal lawmakers.²⁵

There is limited existing research into the power shifts that may occur on the influence of governors and their administration over term-limited legislatures. Studies of

²¹ Todd Donovan, Christopher Mooney, Daniel Smith, “State and Local Politics,” Wadsworth Cengage Learning, 2011. Pg. 241

²² Donovan, “State and Local Politics.” Pg. 240

²³ National Conference of State Legislatures, “The Term Limited States.” January 2013, <http://www.ncsl.org/legislatures-elections/legisdata/chart-of-term-limits-states.aspx>

²⁴ Donovan, “State and Local Politics.” Pg. 240

²⁵ Lydia Saad, Gallup Politics, “Americans Call for Term Limits, End to Electoral College.” January 18, 2013, <http://www.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx>.

term limits tend to focus on their correlation to state finances, congressional leadership, the quality of candidates seeking office and the overwhelming support for term limits in public opinion. Some of the most extensive research to date on executive-legislative relations has been conducted by Richard J. Powell in the publication *Institutional Change in American Politics: The Case of Term Limits*. The author draws from the desertion of seniority and leadership, as well as the long-term relationships developed between both legislators and lobbyists, to illustrate the key finding that consequences in the balance of governmental power are creating shifts within these term-limited legislative cultures.²⁶

This paper seeks to build upon the research of Powell and others. Powell acknowledges that because the legislature is the legislative voice of the people and the most open and accessible through small, regional districts, term limits grant constituents less ability to influence the outcome of decisions on policy issues.²⁷ The ability to effectively oversee and potentially check the operations of the executive branch is reduced by term limits because of the reduction of experienced members in the legislature. More research is needed to delve into the amount and types of legislation passed through term-limited legislatures that were heavily favored and supported by governors' administration compared to legislation that was opposed. This conclusion needs to then be followed up by an examination into data and evidence drawn from economic development in states to see if there are any potential fluctuations or anomalies that having a stronger governor may be causing.

²⁶ Karl Kurtz, Bruce Cain, Richard Niemi, Eds, "Institutional Change in American Politics: The Case of Term Limits," University of Michigan Press, 2007, Pg. 135.

²⁷ Kurtz, "Institutional Change in American Politics...", Pg. 137.

Previous Research on Term Limits

The existing literature on term limits revolves around the concepts of spending and state debt, the impacts they have on candidacy decisions for challengers in both state and congressional elections, and how state legislatures are evolving in response to legislators' limited time in office. In one of the most explanatory scholarly works on term limits, Political Scientists Jonathan Day and Keith Boeckelman examine the effects that term limits have on state spending trends. They analyze the impact of changes in the composition, institutional dynamics and behavior of legislatures after term limits take effect.²⁸ They argue that one of the initial goals of the Term-Limits Movement was to reduce government spending by appealing to "citizen-legislators" to lead their states for a limited period of time.²⁹ The Terms Limit Movement brought with it hope that this new type of citizen-legislator would bring with them the capacity to slash budgets and reduce debts, resulting in the opposite of what many term limit supporters saw as legislative insiders spending to stay in office term after term.³⁰ Their results however, clearly show an increase in spending after the implementation of term limits accompanied by a sharp lack of new revenue. Day and Boeckelman argue that these increasing debt trends are indicative of ineptitude to manage finances effectively. Politicians seeking term-limited seats know they have a limited amount of time to promote themselves, until they are forced to either leave or seek another office. Because of these trends, as pointed out by Day and Boeckelman, it has become common for politicians to lower taxes and increase spending during their terms to increase their public approval before leaving office.

²⁸ Jonathan Day, Keith Boeckelman, "The Impact of Legislative Term Limits on State Debt: Increased Spending, Flat Revenue." *Politics and Policy*, 2012, Pg. 322.

²⁹ Day, "The Impact of Legislative Term Limits...", Pg. 323.

³⁰ *Ibid.*, Pg. 324.

Further, by examining past research, Day and Boeckelman also determine what types of candidates are attracted to serve in legislative bodies with term limits.³¹ They tend to be legislators who are ambitious and more inclined to seek higher office than those in states without term limits. Day and Boeckelman determine these ambitions generally incentivize legislators to increase spending and keep taxes low while in office.³² This increases their appeal among voters when the opportunity to seek higher office presents itself. The authors use this study to lobby against national term limits as a solution for the federal budget and debt crisis. Term limits, they conclude, are an ineffective type of procedural reform that does not resolve the problem of high state debt.

Another influential examination of term limits observes the impact that state term limits have on elections. Political Scientists Nathaniel Birkhead, Gabriel Uriarte and William Bianco test the effect of term limits on the quality of candidates who eventually challenge incumbents in the U.S. House of Representatives in *The Impact of State Legislative Term Limits on the Competitiveness of Congressional Elections*. It is concluded that “termed-out” state legislators who still wish to hold office will run in congressional primaries, often deterring other qualified and electable candidates from running, in part to not face difficult primaries before the general election.³³ Their study shows that placing term limits on state representatives can generate a “substitution effect” and increase the likelihood that state legislators will run for the U.S. House. The study argues that proponents of term limits correctly assume that limits increase the number of politically experienced potential challengers for congressional elections.³⁴ In many

³¹ Ibid., Pg. 323.

³² Ibid., Pg. 324.

³³ Nathaniel Birkhead, Gabriel Uriarte, William Bianco, “The Impact of State Legislative Term Limits on the Competitiveness of Congressional Elections,” American Politics Research, 2010, Pg. 844.

³⁴ Birkhead, “The Impact of State Legislative Term Limits...”, Pg. 857.

situations where Congressional incumbents enjoy safe districts, they are finding themselves being challenged by state legislators who are forced from office with no other place to go.

Many scholarly works on the issue of state term limits acknowledge that they have remained very popular with voters. The grassroots organization U.S. Term Limits reports that, in the fifteen states where term limits are in place, voters were overwhelmingly in support of the referendums. In fact, the average vote was 67% to approve.³⁵ A 2002 article by The Council of State Governments, *Term Limits Produce Changes*, recognizes that states must adapt to these constituent-driven term limits. They state:

While some legislators and other interested parties are trying to revise term limits, others are trying to change the way they conduct their business to reflect the new paradigm. Legislators in term-limited States are adjusting their behaviors. Both the effects of term limits and the responses vary, as so legislative culture and organization in each State.³⁶

The study also acknowledges that legislators must create a new model of governance centered on recruiting and training potential candidates. Ideally, this would generate a pool of candidates with experience and skills garnered in the private sector and other local government offices, resulting in potential candidates who previously may not have had the opportunity to impact state legislatures. At the time of the article, California Assembly Speaker Robert M. Hertzberg was quoted as saying, “Given the interaction between State and local government on a wide range of issues, many freshmen join the Assembly with direct experience with – and with valuable perspectives in – the pressing

³⁵ U.S. Term Limits, “State Term Limits,” <http://termlimits.org/term-limits/state-term-limits/> (accessed February 24, 2013).

³⁶ Donald Hunter, Fred Vickers, “Term Limits Produce Changes,” The Council of State Governments, 2001. Pg. 25.

policy issues of the day.”³⁷ The article also acknowledges how new members and their staffs are familiarizing themselves with legislative/policy procedures and constituent service at a faster rate to compensate for their limited time in office. This has prompted states to offer seminars and comprehensive training programs from academic institutions, state agencies and special-interest groups aimed at quickly educating lawmakers much more intensively because of term limits.³⁸ This also means that the window that legislators have to advance their agendas is dramatically shortened. To counter this, many legislatures have modified legislative schedules, committee structures and chamber rules to improve the ability of members to address policy issues.³⁹ For example, the Ohio House majority is holding more legislative caucus meetings to allow members to improve their comprehension of complex issues.⁴⁰ The Council of State Governments demonstrates that states, with proper training, will be able to counter the inexperience factor those opposed to state term limits fear new members will encounter.

Existing research rarely examines the dynamics that term limits create between the legislative body elected to represent very small districts and that of the state’s chief executive, the governor. State legislatures and governors need one another to promote desired policy goals. One branch cannot pass bills or advance policy goals without the other. However, as Political Scientist Thad Kousser points out, “Neither branch can compel the other’s cooperation, the performance of its major functions depends on its ability to bargain successfully.”⁴¹ Do term limits on state legislators empower governors,

³⁷ Ibid., Pg. 25.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid., Pg. 37.

⁴¹ Thad Kousser, “Term Limits and the Dismantling of State Legislative Professionalism.” Cambridge University Press, 2005, Pg. 153.

thirty-six of whom have term limits themselves, and gubernatorial candidates unfairly, giving them clear advantages over inexperienced legislative representatives?

In states with term limits, there exists a disproportion in bargaining and influence between governors and legislatures. This disproportion depends on several other variables as well, including how gubernatorial term limits affect this relationship. This relationship between supposed equal branches of state governments indicate that there is a possibility that a shift may be occurring in some situations where legislative term limits (and possibly gubernatorial limits) are not being conducted with a fair system of checks and balances; leaving one branch at clear disadvantage.

As previously indicated, most existing research on state term limits revolves around the same apprehensions. Certainly most fall short of comparing that additional information to how it relates to gubernatorial term limits. These existing theories and shortcomings motivate research that will ideally indicate whether or not branches that should be fair and balanced are falling short of that goal, and if there are inadvertent economic effects.

Extensive data on term limits have been collected to examine the issue by the Joint Project on Term Limits (JPTL), a collective analysis that was conducted by the National Conference of State Legislatures, the Council of State Governments the State Legislative Leaders Foundations and various legislative scholars. The project was conducted between July 2001 and December 2004, examining the eight states that had term limits at the time.⁴² The study includes a national survey of all state legislatures, which provides data and information to conduct comparisons between term limited and

⁴² National Conference of State Legislatures, "Joint Project on Term Limits." <http://www.ncsl.org/legislatures-elections/legisdata/joint-project-on-term-limits.aspx> (accessed April 15, 2013).

non-term limited legislatures, as well as the attitudes and opinions of term limits and its effects on their states, the strength of the executive branch, and their overall job performance since the change. The case studies and research provide many interesting insights into the issue of term limits and how it varies among the states. The study is limited by its age, as new states have been impacted by term limits, and some that were influenced by them at the time have since been repealed, but it does provide the necessary information for examining the executive-legislative relationship and its effect on economic development.

Evidence and Methods of Analysis

Analysis of comparable datasets for term-limited states will examine variations that term limits may create between the executive-legislative relationships. This study will not only build upon research previously conducted, but also explore more intensively legislative records, committee reports, hearings and floor debates. Floor debates and speeches in particular, will provide an interesting perspective into the opinions and arguments of representatives of term-limited legislatures as they push for bills or amendments. In the study *Legislating Without Experience: Case Studies in State Legislative Term Limits*, the authors quote a California legislative staff member who highlighted how term limits affect representatives and how easily they can be controlled by governors:

On the Budget, members will be much more interested in their pork after term limits, because they don't have time there to do something tangible on the bigger scale. They are much more susceptible to getting picked off with pork.⁴³

⁴³ Rick Farmer, Christopher Mooney, Richard Powell, John Green, Eds. "Legislating Without Experience: Case Studies in State Legislative Term Limits." Lexington Press, 2007, Pg. 34.

Research of potential expansions in pork barrel funding, or procurement of money for “home district projects,” versus years preceding term limits would build upon these studies.

The paper will then present a comparative case study of states with similar constituent identities to provide information on the effects legislative term limits have on the executive-legislative relation. A comparison of South Dakota, which has legislative term limits, to North Dakota, which does not, will allow for a comparison of legislation passed, levels of pork barreling and budget battles that legislatures encounter with executive administrations.

This paper uses the term “state legislature” as the generic term for all state-level legislative bodies within the United States. Currently, a slight majority of states refer to their legislative bodies as “state legislatures,” while the remaining states refer to theirs as various types of general assemblies or courts. For research purposes all state legislative branches will be referred to as state legislatures.⁴⁴

Results

As Powell points out, the intent of term limits is to address what was thought to be a hiccup in the relationship between legislators and their constituents.⁴⁵ Advocates failed to address concerns for the issue of separation of power at the state level for how term limits could affect the institutional relationship between legislatures and governors. Previous research into term limits clearly indicates that there is a sharp decrease in the experience and personal sway that state representatives have on the legislative process in their state. It is important to note how these changes directly affect the structure of the

⁴⁴ Todd Donovan, Christopher Mooney, Daniel Smith, “State and Local Politics.” Wadsworth Cengage Learning, 2011, Pg. 233.

⁴⁵ Kurtz, “Institutional Change in American Politics...”, Pg. 137.

internal functions of legislatures by eliminating what had been lucrative incentives to a strong balance of inter-branch relations.

Term limits have led to a situation in which legislators are much more persuadable by executive officials because of a lack of knowledge and expertise in the legislative process. Similarly, they also recognize the superior comprehension and proficiency that a governor's staff holds. The change in institutional incentives maintained by legislatures is amended under term limits. Shorter legislative careers make it less beneficial to pick fights with the executive branch. Those who seek office are more likely to use it for a launching point for future careers in politics, and the prospect of picking a fight with the executive establishment is not appealing to those members. As a member of the Arizona Legislature put it, "I'm amazed about how many people here are using the office as a jumping off point – we have several aspiring congressmen and governors."⁴⁶

The constant rotation of term-limited legislators also plays a major role in the power shift away from the legislative and towards the executive. The shortened tenure in office provides less opportunity for members to gain the much needed experience and involvement that build strong party leadership within the legislatures. In turn, the quality of committee chairs affects the value of legislation being purposed. This has resulted in trends where rank-and-file legislators, as Powell refers to them, have become the norm. They are less likely to follow their leadership, whose limited time left in office gives them ultimately no influence over the long-term career aspirations of their members. The

⁴⁶ David Berman, "Effects of Legislative Term Limits in Arizona," Joint Project on Term Limits, 2004. Pg. 3.

turnover rates under term limits can be dramatic, with as much as half a chamber being ineligible to run for reelection in the first year in which their impact is felt.⁴⁷

As previously mentioned, the deteriorated significance of committees and the politicians who chair them have greatly reduced the legislature's power. Traditionally, legislative committees consisted of members who had prior experience or knowledge on issues pertaining to their committee, resulting in recommendations to which both the executive and legislative branches would often adhere. Applying lessons learned from prior research to the executive-legislative relationship, the information makes the argument that a committee's influence depends on two factors. The first is the perception that it has an informational advantage in its area of jurisdiction. This entails the notion that these committees are comprised of researchers and lawmakers who contain a heightened understanding of the issues at hand and how those issues are intertwined with the legislative process. The second issue is the unwritten norms of legislative specialization. The loss of legislative experience however, as well as the institutional maintenance of making sure that committees are staffed with the most knowledgeable staffers available, has led to a situation in which committees and their chairs are no longer seen as the beacon of legislative expertise by executive officials on any given issue.⁴⁸

Leadership under term limits may arise much faster and for a briefer amount of time than before. The tenure of this legislative leadership often does not last longer than

⁴⁷ National Conference of State Legislatures, "Legislative Term Limits: An Overview," <http://www.ncsl.org/legislatures-elections/legisdata/legislative-term-limits-overview.aspx> (accessed February 24, 2013).

⁴⁸ Kurtz, "Institutional Change in American Politics...", Pg. 141.

two years.⁴⁹ There has always been a noticeable shift in the method to which members rise into these leadership positions. Before term limits, the standards would have included serving in some leadership capacity associated with seniority. Now however, they are more easily gained by those with elite fundraising abilities or operations.

Most of these new legislators who achieve leadership under term limits do it near the end of their set limits. This puts them in a lame duck phase in which other members and the state's executive branch are much less likely to cooperate with them, even though they may have just recently obtained their positions. This results in state legislatures comprised of much less party discipline and overall productivity.

Term limits remove institutional incentives for legislators to compromise and ultimately defend their own branch of government. It reduces loyalty to the legislatures because they no longer have a long-term stake in its long-term standing.⁵⁰ Previous legislators in these states, who did not have term limits, would have recognized this as a lessening of their own individual influences now resulting in a clear erosion of legislative authority.⁵¹ This is also seen in the oversight functionality of legislatures, in making sure that executive officials are implementing laws in the correct fashion.

Committee oversight of executive agencies has become much less enforced and authoritarian since the implementation of term limits. This aligns with the previously mentioned finding that inexperienced members are more likely to view executive members as experts on any given issue, as opposed to their own leadership. This in turn affects the ability of a legislative committee to oversee or challenge an action or implementation of a law by the administration. This builds upon the lessening of

⁴⁹ Ibid., Pg. 56.

⁵⁰ Ibid., Pg. 139.

⁵¹ Ibid., Pg. 139.

legislators' own influence by highlighting trends in which legislatures are not defending prerogatives and laws they implemented by challenging an executive branch's action.

Powell highlighted this decline of oversight by looking at the decrease in the number of supplemental budget requests that have been made by the California Legislature. Before term limits, the average number of requests was 199. Since term limits that number has fallen to just 120.⁵² The number of executive agencies under the jurisdiction of such legislative request has fallen from 61% to 51%, and there has been a clear decrease in the number of legislative requests for reports from the Bureau of State Audits. These same trends can be seen in other term-limited states as well, with the lack of oversight functionality being sighted as a clear indication of an imbalance of the executive-legislative relationship.⁵³

In examining evidence and reports on the effect of term limits it is clear they do create considerably more influence in favor of the executive administration. It favors unelected employees in the executive branch and lobbyists who have both more political experience and institutional retention over inexperienced legislatures, and are not directly held accountable by constituencies. The intention of term limits was to shift legislative power away from "career politicians" towards general citizens, but instead we find that limits have shifted extra power to the executive branch. This creates a trend that is not in line with the equal mantra of the constitutional system of three branches of government. It moves political influence away from those who are elected to have direct sway in dealing with the legislative process, in addition to the system of checks and balances in place to hold governors and their officials accountable.

⁵² Ibid., Pg. 144.

⁵³ Ibid.

Now that it has been established that there is a clear shift in the balance of power between these two branches of government, any effects made due to this change need be examined; specifically in regards to changes to these states' economies. With the executive branch less likely to encounter opposition from state legislatures during the law making process or via oversight, they have the opportunity to endorse their own initiatives without as many objections or alterations as had previously been the case. By examining the economies of states with term limits, before and after the limits took effect, we can see if there are any situations in which states have encountered a decline in economic performance and earnings. In light of the previous acknowledgment that term limits do in fact grant more power to the executive branch, this analysis will allow for the comparative examination of whether a stronger governor affects a state's economy differently than that of a state without term limits. To examine this relationship and any change in state spending and growth, this thesis will set pecuniary parameters based on economic indicators that allow for the analysis of these states' performances. Examining indicators, such as population, state bond debt, unemployment rates, among others, will occur within an annual constraint of roughly ten years prior to the year of impact for the term limits and as many years from that impact to 2012, taking into consideration how recently some of these state's term limits have gone into effect.

Population growth indicates that states are introducing legislation and policy that make it appealing for both new businesses and residents to either relocate to specific areas or feel economically strong enough to expand their families. The population growth of the fifteen states with term limits do not indicate any significant findings indicating that the greater influence of gubernatorial power have affected them. At their years of

impact outlined in Table 1, the states all continue the same steady growth pertaining to population, as they were experiencing prior to the change (see Table 2). Louisiana, which experiences the greatest abnormality in population decrease due to Hurricane Katrina in 2005, shows a rebound in growth around their year of impact, 2007. This resulted in them regaining a positive increase similar to what they were experiencing prior to 2005. Michigan is the only state that experiences any type of steady decline after their year of impact, 1998. It begins in 2006 at 10.0361 million and balances out from 2011 and 2012 around 9.877 million residents. While this decline could have been affected by the Michigan Legislature beginning to feel the effects of proposed budgets, which are submitted annually through Michigan's State Budget Office, and the Michigan Governor's ability to have line-item veto for appropriation bills (which could see decreased opposition due to term limits), it was most likely caused by the Great Recession.⁵⁴ This had a major implication on industrial states, like Michigan, whose economies are heavily dependent on automobile manufacturing. Michigan's steadiness and slight resurgence of population growth in the 2010-2012 timeframe indicates as much.

States often utilize bond financing as a type of long-term borrowing to raise revenue. A rise in state bond debt is usually associated with a major project related to public infrastructure renovations. Term-limited states do experience sporadic levels of state bond debt issued, but they are not disproportionate when compared to states without term limits. California and Florida serve as the most intermittent trend over their period of observation with California issuing \$2.5686 billion from 2008-2009 alone. This drastic

⁵⁴ Michigan Department of Technology, Management and Budget, "Budget Process," <http://www.michigan.gov/budget/0,4538,7-157-11462-34950--,00.html> (accessed March 3, 2013).

Table 2 - State Population
Data from U.S. Census Bureau



Table 3 - Bond Debt Issued (Amount in Dollars)
Data from Office of Highway Policy Information, FHWA

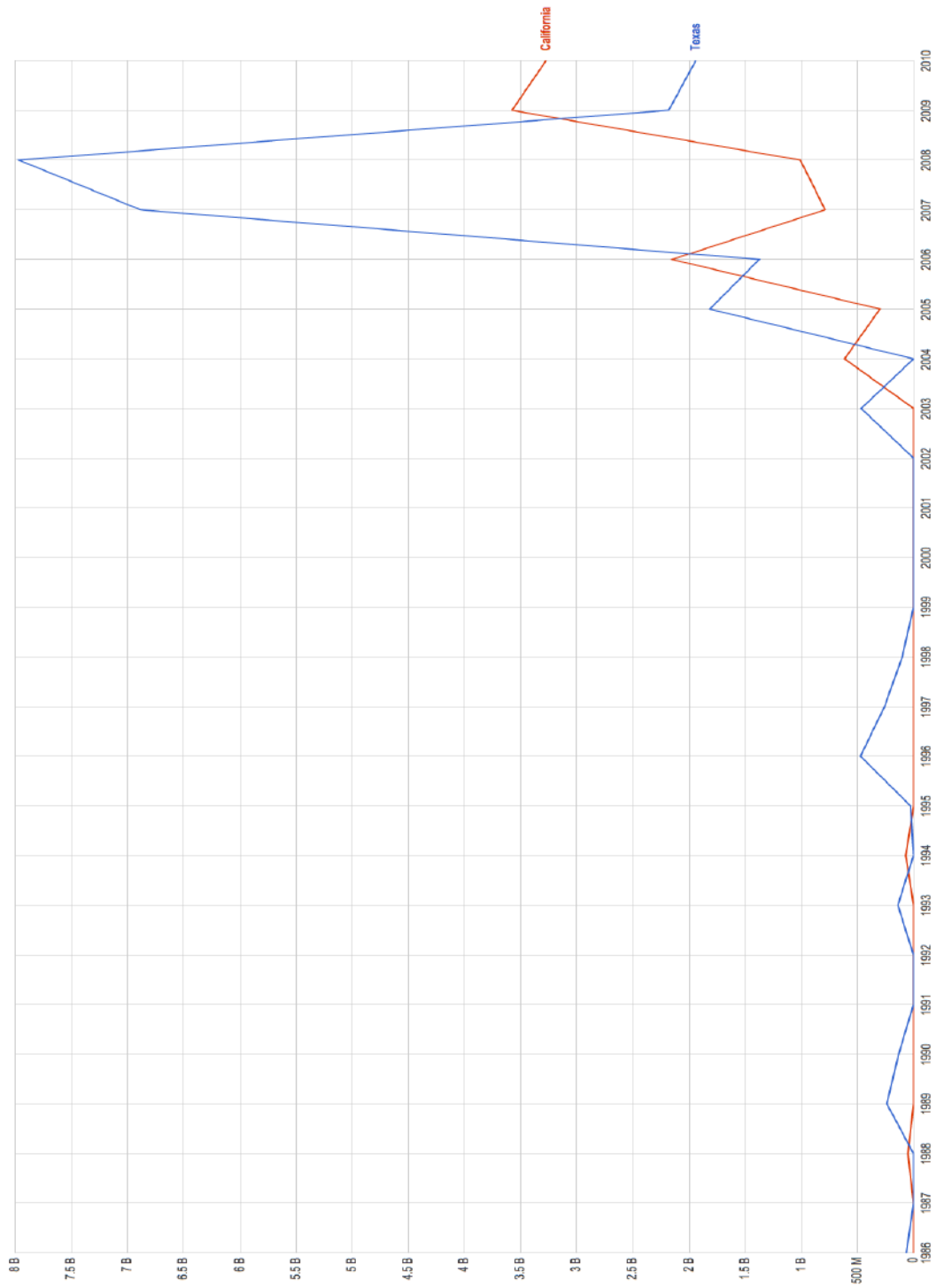


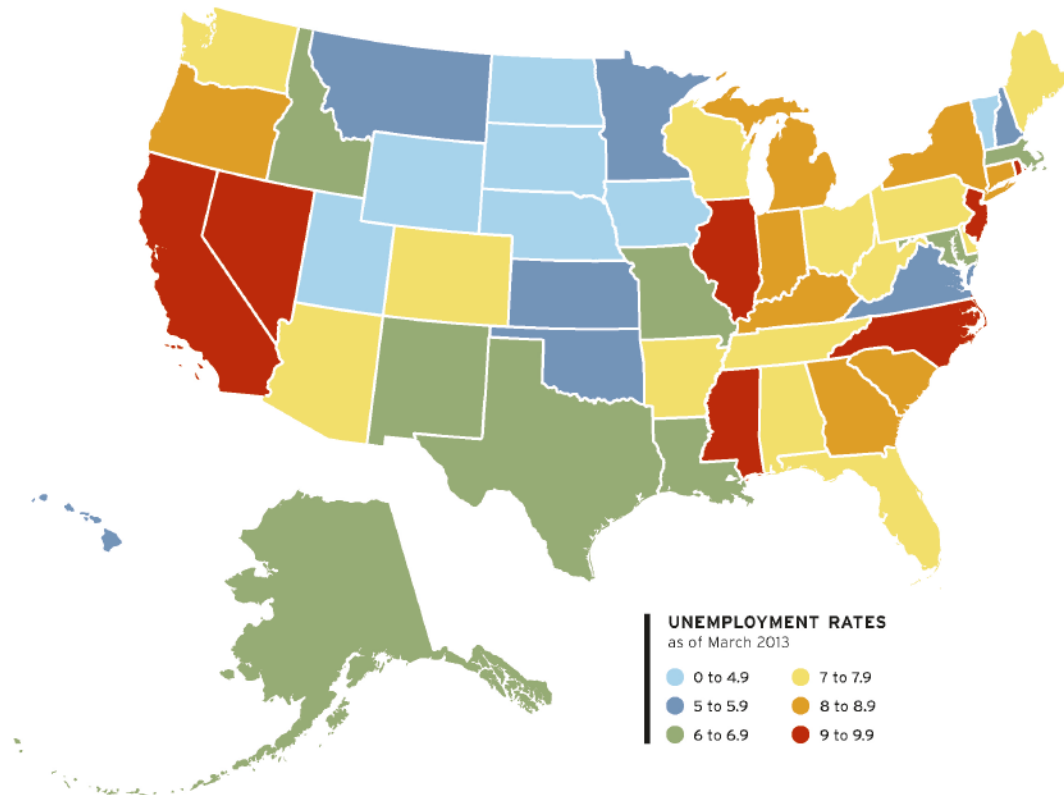
Table 4 - State Bond Debt Outstanding
Data from Office of Highway Policy Information, FHWA



allocation can be attributed to the 2008-2012 California budget crisis, in which California faced major budget shortfalls due to declining revenue. When compared to Texas without term limits (which leapt close to \$7 billion from 2006-2008), it is clear that term limits and extra gubernatorial power do not generate any type of unusual issuance of state bond debt (see Table 3). The same can be said for measurements of bond debt outstanding. All term limit case studies indicate there is not uniform progression in trends starting at their year of impact or in the subsequent years. States like Florida, California, Maine, Michigan, Missouri, and Arizona see steady growth in their outstanding state bond debt, while Colorado, Arkansas, Ohio, Oklahoma, Louisiana, and Nevada experience more bell-curve like trends during their examination periods; all correlating with global economic decline trends or idiosyncratic events that occurred within those states. South Dakota and Nebraska did not issue any bond debt (See Table 4). As previously mentioned state bonds are issued for a number of program-oriented issues. The Oklahoma State Government website describes state bond debt's purpose as being for "essential infrastructure maintenance, renovation, and new construction, as well as equipment upgrades. Program purposes include reduced cost loans for housing, education, and water development/treatment."⁵⁵ Previous research would suggest that if governors with increased power over legislatures who seem eager to provide more revenue with lower taxes should result in an increase in state bond debts for these states in order to finance infrastructure projects. The lack of such a trend indicates that stronger chief executives do not affect term-limited states' economies in terms of bond debt.

⁵⁵ Oklahoma State Bond Advisor, "State of Oklahoma Bonded Indebtedness," http://www.ok.gov/bondadvisor/State_Debt/ (accessed February 26, 2013).

Unemployment rates will also serve as an indicator, and stipulate the economic conditions and any alteration that these states have experienced since the implementation of



be that governors could more easily enact education and training, industry development and other job creating measures to decrease the rate through increased spending versus their weakened state legislatures. This pattern however, is not observed. Rather, there is little difference between term-limited states and their counterparts. Unemployment rates across the country as of March 2013 clearly indicate term limits play no role in a uniformed tendency (see Figure 2). Economic activity like the Great Recession is the best explanation for the increase in unemployment rates around 2006-2008.

A case study that relates a state with term limits to one without term limits based on comparable demographics yields similar results. This paper compares North Dakota, which has no term limits, to South Dakota who does (see Table 5).

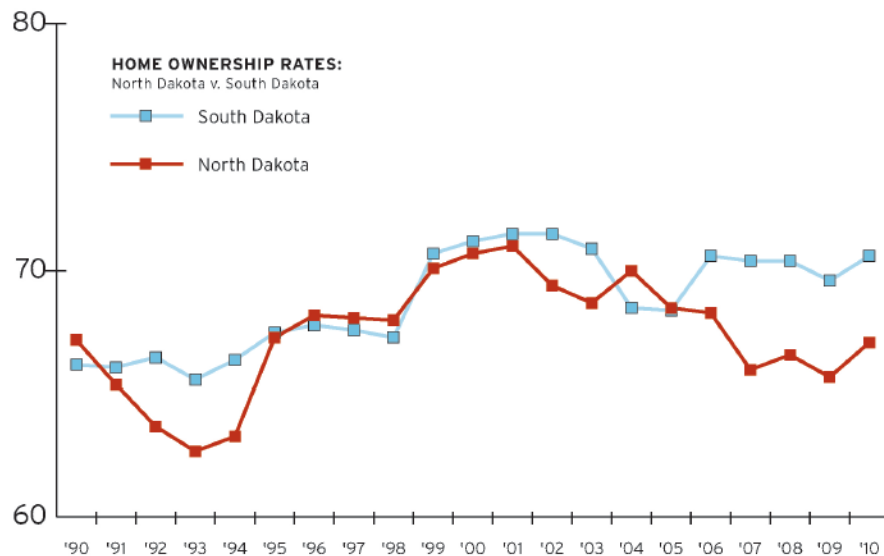
Table 5 - Demographic Comparison for North Dakota and South Dakota
Data from U.S. Census Bureau

State Facts	North Dakota	South Dakota
2013 Population	723,393	844,877
Median Household Income, 2008-2012	\$51,641	\$49,091
Bachelor's Degree or Higher (Age 25+)	27.1%	26.0%
Women Owned Firms	24.8%	22.2%
Racial Demographics		
White	89.6%	85.9%
Black	1.8%	1.9%
American-Indian	5.4%	8.9%
Asian	1.2%	1.2%

When South Dakota, who began to be impacted by term limits in 2000, is compared to North Dakota, there are variations at various periods for all of the economic indicators mentioned, but none correlating either with their year of impact or the ones immediately following that would trigger any suspicion relating to term limits or a stronger executive branch. Homeownership rates for example, demonstrate no noticeable variation between South Dakota and North Dakota that would indicate this correlation (see Figure 3). Besides population, state bond debt, unemployment rates and homeownership rates, this

research examined high school graduation rates, retail sales and gross domestic product. There were no unique trends illustrating that any abnormal effect strengthened the executive's part in the economic development of these states. Homeownership rates for the Dakotas, as seen in Figure 3, show that in the immediate years after South Dakota's year of impact (2000) there was no variation at all from the initial progression that North Dakota experienced.

Figure 3 - Homeownership Rate
Data from U.S. Census Bureau



Conclusion

This paper concludes that term limits grant the executive branch increased power in the legislative process at the expense of elected legislative representatives. However, this seems to have no effect on the economic development of these states, compared to economic trends both prior to the implementation of term limits and when compared to states without term limits over the same period of time. This disproves the studies original hypothesis, concluding that since there were no similarities in economic changes

distinct to term-limited states, the strengthened position of governors must not be influential on a state's economy.

Future research on the subject will better observe any changes over longer periods of time. This paper is working with data that in some cases was as short as six years since the impact of term limits. This creates difficulty in examining the various effects of term limits. For example, Nevada did not have their year of impact until 2010 when their twelve-year limits, enacted in 1996, began to impact representatives from their state's legislature. This means that there were only two years of available data for which to examine Nevada. This limitation will mean that analysis for Nevada and other states in similar situations will have to use relatively weaker datasets. Any future studies will reveal any long-term developments in the role that a stronger governor can play in affecting these economic indicators and their influence on these states. Future studies should also look at additional economic indicators that could create a larger, more comprehensive picture of the executive-legislative relationship. An examination of trends such as demographic shifts, household income and other datasets could reveal specific variations in states with term limits that other economic indicators did not expose.

Similarly, future studies could examine more deeply into the role that varying limits of power and term limits on governors themselves play into the effects of term limits on legislators, and how they impact their behavior to increased legislative power. Currently thirty-six states in the U.S. have term limits on gubernatorial offices, including all fifteen states that have term limits on their legislatures. The limits vary in term length and ability to run for reelection. There could also be an examination into cases of executive authority that governors maintain, such as the line-item veto. In this study

however, it is safe to assume that term limits do not affect states' economies in any idiosyncratic way. Future studies should also take into consideration how partisan politics factors into this analysis. Party control over either branch, whether controlled by Republican, Democrats or both, could possibly determine how aggressively governors use this tilt in power, influence a specific state's economy differently.

It will be vital for future studies to acknowledge the different types of term limits in place for both governors and legislatures, and how variations of these limits affect the relationship. These disparities in term limit combinations will require wide-ranging examination of the states' political representation, and how the executive-legislative relation changes under various permutations of term limits. This would also help develop an appropriate performance benchmark for the analysis of states with term limits. By examining legislative productivity, enacted budget proposals, the amount of prior legal or expert experience legislators had when assigned to committees and a variety of other standards, it would be possible to see whether states are more or less productive with their specific variety of term limits. This would give state officials a pragmatic analysis for how state governments function under term limits, and how they should be adjusted accordingly by states to improve the way they conduct their business.

The results of future studies could also draw parallels for how the executive-legislative relationship would be affected on the national level if term limits were placed on the U.S. Congress. While it would be almost impossible to conduct any case studies or examinations of term limits impact federally since there is no history to examine, the information attained through these case studies on states, specifically larger ones with

similar demographic to the nation as a whole, could be seen as comparable to the impact term limits would have on the U.S. Legislature.

It is important to note these factors for future studies to engage further. The full picture on term limits is not yet developed, but combined with the knowledge expanded here it will help direct future exploration on the issue. It will help further the understanding of the skewed executive-legislative relationship, and guide observations in economic development and progression for term-limited states.

Chapter 2

Effect of the 17th Amendment on State Legislatures

Introduction

Since its ratification in 1913, the 17th Amendment to the U.S. Constitution has mandated that all U.S. senators must be elected by a popular vote. Prior to this amendment, senators were elected by state legislatures to six-year terms. Research will explore and examine the question: How do current state legislators view the 17th Amendment and the modern debate over its reform or repeal? This study consists of research that examines the history of the 17th amendment and the reasons for its implementation. It will then consider the bill in a modern context, by observing current debates and literature on the subject. This information will help frame the issue as it is understood and debated today, and how individuals with various political ideologies view the 17th Amendment. This study will also engage current state legislators in order to gauge the present-day beliefs of those being limited by the Amendment. This will allow insight into whether current members of state legislatures feel that the Amendment is still needed or if it is an overextension of federal power and a violation of state representation. It is hypothesized that many current state representatives feel it should be overturned in favor of state legislative appointments to the U.S. Senate. This is an important question to explore, not only because it will illustrate how state legislators view and comprehend the evolution of the 17th Amendment, but also because these interviews can help expose any unintended effects the Amendment has created for these representatives.

Background and Motivation

The original intent of having state legislatures appoint U.S. senators was to ensure that the federal government consisted of representatives with a vested interest in the states, and at the same time vote in a manner that they felt was needed without succumbing to unpredictable outcries from the public. Article 1, Section 3, Clauses 1 and 2 of the Constitution outlines this measure stating:

Clause 1: The Senate of the United States shall be composed of two senators from each state, chosen by the Legislature thereof, for six years; and each senator shall have one vote.

Clause 2: Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.⁵⁶

The clauses had overwhelming support at the Constitutional Convention of 1787, especially from Anti-Federalists. This measure was seen as a way to ensure states' power and sovereignty within an expanding federal government. Many in the Constitutional Convention hoped it would develop the Senate into a body similar to the House of Lords in the United Kingdom's Parliament, consisting of more educated and professional statesman rather than the public servants who would serve in the House of Representatives.⁵⁷ It would also allow state legislatures the ability to direct their senators

⁵⁶ Cornell University Law School, "U.S. Constitution – Article I," <http://www.law.cornell.edu/constitution/articlei> (accessed June 15, 2013).

⁵⁷ Jay Bybee, "Ulysses at the Mast: Democracy, Federalism, and the Sirens' Song of the Seventeenth Amendment," University of Nevada, Las Vegas – William S. Boyd School of Law, 1997, Pg. 509.

on matters coming before Congress. Senators would be the direct representatives of state assemblies while the House would serve the people.

Motions for a constitutional amendment reforming the way U.S. senators were elected was introduced as early as 1826.⁵⁸ At the time, one of the main reasons was charges of corruption. There was a wide-ranging consensus that many seats in the U.S. Senate were being filled by legislators and businessmen who were paying off state representatives for votes. The most notable case was Montana official William A. Clark. A prominent newspaper and mine owner throughout Montana, Clark was found to have bribed several members of the Montana State Legislature for votes in an 1899 election, and was refused his seat in the Senate at that time.⁵⁹

There was also the noticeable number of unfilled seats in the U.S. Senate left by inconclusive legislative elections. Between the years of 1891 and 1905, eight state legislatures were unable to elect a senator, and were without representation for periods of ten months up to four years.⁶⁰ Delaware provided the most critical example, being unable to elect a U.S. Senator in 1895, 1899, 1901 and 1905 and leaving seats unfilled from March 1899 to March 1903.⁶¹

As more states and political parties across the United States began calling for constitutional conventions on the matter, reform seemed inevitable. The vote came before the U.S. Senate and passed 64-24 with 4 abstentions, passed the House of Representatives 238 to 39 with 110 abstentions and by the time Secretary of State William Jennings

⁵⁸ Bybee, "Ulysses at the Mast..."Pg. 536.

⁵⁹ Biographical Directory of the United States Congress, "CLARK, William Andrews, (1839-1925)," <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000454> (accessed 22, 2013).

⁶⁰ Bybee, "Ulysses at the Mast..."Pg. 542.

⁶¹ Ibid., Pg. 542.

Bryan announced its adoption on May 31, 1913, it had been ratified by three-quarters of the states (see Figure 3), and read:

- The Senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.
- When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.
- This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.⁶²

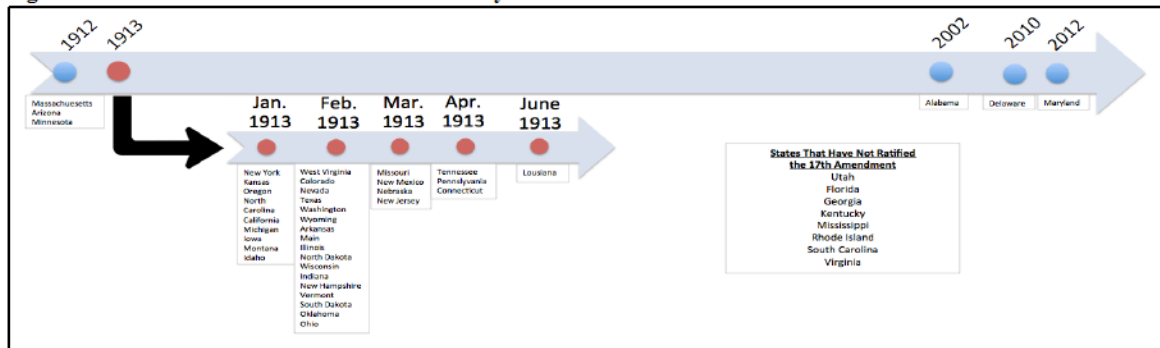
Extensive research has been done by political scientists concerning the role of the 17th Amendment and its effects on the political composition of the U.S. Senate and state legislatures. Research tends to focus on a shift away from the copy, as Alexander Hamilton referred to it, which occurred between state legislatures and their dominant political party electing delegates who were of similar political ideology as their state's majority. These scholarly works examine how this has changed the way majority control of the U.S. Senate has shifted from what it would have been without the implementation of the amendment.⁶³ Studies emphasize the rise of special interest groups as a result of the 17th Amendment, and how it has allowed for the impact of advocacy groups and lobbyists from outside the elected official's state to impact their views. Judge Jay Bybee of the United States Court of Appeals for the Ninth Circuit provides some of the most extensive examination of the 17th Amendment and its ramifications in his work *Ulysses at the Mast: Democracy, Federalism and the Sirens' Song of the Seventeenth Amendment*. In it, Bybee uses historical analysis of party makeup in both state legislatures and the

⁶² Cornell University Law School, "U.S. Constitution –17th Amendment," <http://www.law.cornell.edu/constitution/amendmentxvii> (accessed June 15, 2013).

⁶³ Alexander Hamilton, James Madison, John Jay, "The Federalist Papers," Penguin Books, 1961, Pg. 367.

U.S. Senate from the late 19th century to the late 20th century to illustrate shifts in control

Figure 4- Ratification of the 17th Amendment by States



of the Senate over more than a hundred year period in the United States.⁶⁴

Bybee briefly touches on the issue of how the 17th Amendment could have played a role in disengagement between the citizenry and the state legislatures. He makes the point that state officials today are “elected by a relatively small proportion of the electorate.” Bybee expands on this point by arguing that these officials have experienced a shift where before state legislative issues and elections were endowed by the influential fact that the legislators elected by the citizenry held control of their representation in the U.S. Senate to one today in which state legislatures have little to no federal oversight.⁶⁵ This insight raises the question of how the 17th Amendment changes the intent of Article One of the Constitution, a change which John Jay described as “...the activity of party zeal taking advantage of their supineness, the ignorance and the hope and fears of the unwary and interested, often places men in the office by the votes of a small proportion of the electors.”⁶⁶

⁶⁴ Bybee, “Ulysses at the Mast...”Pg. 552.

⁶⁵ Bybee, “Ulysses at the Mast...”Pg. 556.

⁶⁶ Hamilton, “The Federalist Papers,” Pg. 389.

Previous Research on the 17th Amendment

17th Amendment research and literature tend to focus on arguments for state representation in the federal government versus arguments for allowing the responsibility of representation in the U.S. Senate to fall with the people. Within this existing literature, there come two distinct lines of argument, one that supports the 17th and another that calls for clear reform, and in some cases its complete repeal. Charles C. W. Cooke, in his National Review article “Repeal the 17th Amendment,” takes the latter approach, arguing that the 17th Amendment has dismantled the Constitution as a democratic instrument into one that involves what he describes as where “America’s democracy fetishists go wrong.”⁶⁷ His argument includes the stance that the Senate simply was not designed to include popular sovereignty, and to make an argument for it is similar to allowing the public to vote for Supreme Court Justices.⁶⁸ This separation is argued to have done nothing more than establish another branch of the U.S. Congress that is identical to the House of Representatives, and effectively eliminated the states’ oversight capacity of the federal government.

Cooke explains this dismissal of what he labels as a clear management capacity held by the states on the federal government by saying:

The Senate was not intended to be the people’s representative body, but that of the states. Lest the federal government “swallow up the state legislatures,” George Mason insisted to his fellow convention delegates in Philadelphia, “let the state legislatures appoint the Senate.” The delegates backed him unanimously.⁶⁹

Looking at the environment within which the 17th Amendment arose, Cooke also concludes that the Wilson-Era Progressives of the time did not have a strong enough

⁶⁷ Charles C.W. Cooke, National Review, “Repeal the 17th Amendment,” <http://www.nationalreview.com/articles/341894/repeal-17th-amendment-charles-c-w-cooke> (accessed June 17, 2013).

⁶⁸ Cooke, “Repeal the 17th Amendment.”

⁶⁹ Ibid.

justification to separate the two levels of government, and ultimately allow the federal government to grow and function with little oversight from those of the states. The main argument for the 17th Amendment, as previously mentioned, dealt with concerns of corruption and bribery that were extensive at the time in Senatorial elections. Cooke points out that since the Amendment was implemented, there is now more money in politics, and no buffer between outside interests and U.S. senators.⁷⁰

Parts of the previously mentioned work by Judge Bybee echo these sentiments, and discuss how it has led to situations in which senators have become more legislatively isolated since 1913. Whereas, state legislatures had, and some continue to, issued requests of their Senate representatives, few adhered or listened to those reports following implementation of the amendment. In fact they became less inclined to vote together with their state's other representatives than any prior time in U.S. history. Bybee cites this lack of legislative direction by state houses as the reason for the rise of public opinion polls in the U.S.⁷¹ These polls continue to give senators direction on issues that are before them, but they are coming from a source that is largely unfamiliar with specific issues, limiting their quality. Bybee argues that this is a far cry from legislative directives and instructions that were issued by state legislatures, and individuals with expertise and an understanding of the initiatives they were pushing.

Bybee also attributes the significant number of terms that senators hold their offices today to the 17th Amendment. Prior to its implementation, senators were elected by individuals in state legislatures who had their own lofty ambitions of public office.⁷² They were much more inclined to watch senators and pay attention to their endeavors

⁷⁰ Ibid.

⁷¹ Bybee, "Ulysses at the Mast..."Pg. 557.

⁷² Ibid., Pg. 559.

more closely, resulting in a better environment of legislative accountability. Senators had to respond to what their elective body deemed significant. Opening elections up to the public also made the U.S. Senate much more vulnerable to the powerful influence of political machines and party bosses..⁷³

Another significant assessment of the 17th amendment includes its effects on the relationship between state legislatures and the federal courts. Donald Kochan illustrates this in his study *State Laws and the Independent Judiciary: An analysis of the Effects of the Seventeenth Amendment on the Number of Supreme Court Cases Holding State Laws Unconstitutional*. In it he concludes that when senators broke free of their bond to state legislatures, their political careers were no longer intertwined with those of state legislative sovereignty, and in fact became competitive with it as true members of the federal government.⁷⁴ With this, Kochan argues that state legislatures lost their ability to use senators as a congressional control mechanism to incite the federal judiciary to uphold any state laws that may become challenged. His study shows that courts had operated under an attitude of “institutional stability” with the Senate prior to the implementation of the 17th Amendment.⁷⁵ During this period, the court’s inclinations were more allied and correlated with the preferences of state legislatures. What Kochan refers to as an “avoidance of reprisal” created scenarios in which it was much simpler for courts to preserve state legislative preferences, and maintain an order that was in their best interest.⁷⁶ However, with the separation created by the 17th Amendment between state lawmakers interests and that of the federal government, courts were free to begin

⁷³ Ibid.

⁷⁴ Donald J. Kochan, “State Laws and the Independent Judiciary: An Analysis of the Effects of the Seventeenth Amendment on the Number of Supreme Court Cases Holding State Laws Unconstitutional,” *Albany Law Review*, 2003, Pg. 1026.

⁷⁵ Kochan, “State Laws and the Independent Judiciary...” Pg. 1055.

⁷⁶ Ibid.

pursuing their own policy preferences without running the risk of retribution from the Senate.

Many scholarly works have used the 17th Amendment as the basis to study unique tradeoffs in representations between various institutional entities, exploring how the amendment's transfer of indirect and direct accountability have affected the government in even greater capacities. Political Scientists Sean Gailmard and Jeffry A. Jenkins test this measure and any adverse effects it may have had on the House of Representatives in their work *Agency Problems, the 17th Amendment and Representation in the Senate*. By examining units of observation, including state ideology, vote records and other methods of calculating dynamic measurement comparisons, they were able to determine that the 17th Amendment is not associated with any changes in responsiveness or discretion of House members.⁷⁷ This conclusion allows a basis for their argument that, changes in the Senate as a result of the 17th Amendment, are solely the result of shifts within indirect and direct accountability pertaining to the U.S. Senate, not the result of broader political forces.⁷⁸ They resolve that a tradeoff does exist as a result of the 17th Amendment. Senators have, as a result of its passage, become receptive to the direct power of their state's citizenry, expanding what they label as a "democratically stronger standard" and not affecting any other fraction of government.⁷⁹ However, the citizenry would be noticeably more inexperienced than their previous electorate, eliminating some of the legislative professionalism that the standard once had. They summarize their empirical data on this trade-off by saying it is "analogous to comparing two estimators, one having

⁷⁷ Sean Gailmard, Jeffery A. Jenkins, "Agency Problems, the 17th Amendment, and Representation in the Senate," Midwest Political Science Association, 2009, Pg. 338.

⁷⁸ Gailmard, "Agency Problems, the 17th Amendment...", Pg. 339.

⁷⁹ Ibid.

lower bias but greater variance than the other,” and while it is an important factor to recognize in any design of electoral institution, it does matter more for representation of the people and their interests to be reflected in public policy via the Senate.⁸⁰

Evidence and Methods of Analysis

This research provides an analysis of information and interviews, acquired from existing data and firsthand interviews with state legislators and scholars of the 17th Amendment. This allows for any impacts on the function of state legislators caused by the 17th Amendment to be explored through personal accounts, and provide an insight into the perception state legislators have of the Amendment’s effect on a wide-range of issues. This includes voter participation in state legislative elections and the relationship these legislators have with their constituents. By combining information from these interviews with historical perspectives and additional research, this study will broaden the existing knowledge on impacts of the 17th Amendment on state legislatures, including how this affects their task of effectively conducting their business.

The method of analysis for this report will be based on statements and interviews of both the Republican and Democratic state representatives. This analysis will reveal an understanding of how ideological perceptions play into the modern debate over the 17th Amendment, and how this develops claims regarding the impact of the Amendment on state legislatures. Interviews and evaluation of existing data will then be able to determine if limitations placed on state legislatures by the 17th Amendment do create unintended outcomes that might hurt or assist state legislatures in performing their roles, and the extent to which politics plays into that outcome.

⁸⁰ Ibid.

The generic term for all state-level legislative bodies will be “state legislature.” Currently, a slight majority of states refer to their legislative bodies as “state legislatures,” while the remaining states refer to theirs as various types of general assemblies or courts. For the purpose of continuity, this research will be examined with an understanding that this term is referring to the legislative institutions within each of the states.

Results

The intent of the 17th Amendment was to reduce the role of power and money in choosing who represented states in the U.S. Senate, and to incentivize incumbent senators to conduct their business with the best interest of the people in mind, or risk punishment at the polls. The Founders thought that their intricate framework of power distribution would ensure a competition of natural self-interests. The Campaign to Restore Federalism refers to this as a measure of interest to “preserve the integrity of the states, these independent but united “laboratories of democracy”, and it is this federal system that the 17th Amendment (which provides for the direct, popular election of U.S. senators) destroyed.”⁸¹ Those who are in alignment with this measure believe that the sentiments allude to the Senate becoming an unchecked political machine, with no incentive towards allegiance with the people versus that of special interest.

The progressive movement to ratify the 17th Amendment was supported by national figures such as William Jennings Bryan, fervently arguing for its support. The previously mentioned cases of corruption within State Legislatures had reached a point in the late 19th Century at which the Senate investigated ten cases for alleged bribery and

⁸¹ The Campaign to Restore Federalism, “Repeal the 17th Amendment,” <http://www.restorefederalism.org/2009/03/repeal-17th.html> (accessed June 21, 2013).

corruption.⁸² Conservatives opposing the amendment argued that ten cases over roughly a fifty-year period did not warrant a complete change to the mode of election, but rather a structural change. Senator Elihu Root of New York, an opponent of the amendment, asked “[why] abandon...rather than reform the system...”⁸³ The evidence of corruption that had been brought to light by Senate investigations failed to make any connection to a flaw within a system of indirect elections. Bybee raises the question about completely changing the system by saying, “If the people had proven so notoriously inept in electing state legislators, what made us think they would prove more capable of electing U.S. senators? What populism was there to the cynicism with which popularly elected state legislatures were viewed?”⁸⁴

Interviews and discussions with current members of state legislatures yield interesting results. There does not appear to be a large disparity between Republicans and Democrats concerning the effects of the 17th Amendment, but rather a concern for the way it functions than in its overall existence. This is surprising because it would certainly be expected that more Republicans would support overturning the 17th Amendment, given the consistent conservative argument for state’s rights. From speaking with Republicans and Democrats in the North Carolina General Assembly and other states it has become evident that a more common view is that the 17th Amendment creates a sort of protective barrier between state legislatures and many issues that plagues the U.S. Congress.

An issue that came up regularly in interviews was the impact of campaign financing and special interests groups. With the exception of congressional redistricting, since the 17th Amendment was enacted there has been little need to influence the votes or

⁸² Bybee, “Ulysses at the Mast...”Pg. 539.

⁸³ Ibid. Pg. 540.

⁸⁴ Ibid.

campaigns of state representatives on a level with national implications. This means that state representatives tend to be elected much more often on their political stances and values rather than on capital. This research's original hypothesis was that there would be stronger calls towards granting this power back to state representatives so as to give them more attention and a stronger association with their constituents. It appears, however, that both Republicans and Democrats in North Carolina have learned lessons by watching their federal counterparts deal with gridlock rather than results. State Representative Nathan Ramsey, a Republican serving a district in western North Carolina, felt that the ability to appoint U.S. senators would certainly create more attention for their legislative body, but with a great cost. He summed up his feelings by saying, "The stakes of electing state representatives would be higher, cost of elections would be great, and there would be more [outside] influence because of the national scope."⁸⁵

Representative Ramsey also discussed how he felt the 17th Amendment was effective at preventing corruption in state legislatures. While he did say, "there will always be corruption as long as people serve in public office," he made the clear assertion that, because of the 17th Amendment, "there is less today than there has been historically, despite public opinion to the contrary." Representative Ramsey did not make any claims that he felt constituent involvement with their legislature would be greater were the 17th Amendment removed, and the power of state legislatures increased. He did say that he felt repeal "would probably increase the prominence of state legislatures," but only in regards to the role they play on the federal level.⁸⁶ A Democratic Representative of the North Carolina General Assembly, who asked to remain unanimous, echoed these

⁸⁵ Interview by author. Personal interview. Washington, D.C., July 23, 2013.

⁸⁶ Interview by author. Personal interview. Washington, D.C., July 23, 2013.

sentiments saying, “I don’t believe that citizen involvement via voter turnout or attention to legislative matter would increase anymore than it currently is. If you look at the Moral Monday Protests that have been happening here in North Carolina since 2013 it seems that the people are already aware and cognizant of what’s happening in Raleigh.” When asked what effect, if any, the 17th Amendment has on state legislatures he responded, “I do feel that it keeps considerable amounts of corruption and special interest out of the Assembly, and allows us to do our jobs without having to listen to the needs of those handing out big checks like the U.S. Congress.”⁸⁷

The only groups and representatives extremely adamant about overturning the 17th Amendment were ones who were on the far right side of the political spectrum. They argue that the 17th Amendment takes away from a system of vertical checks and balances that the Framers intended in order to guarantee that state sovereignty and influence could be felt throughout the national government. Former New Jersey Superior Court Judge Andrew P. Napolitano is one of these voices and a strong advocate for limited constitutional government. When asked in an interview in 2010 what he thought was the single most needed political reform was, he responded:

I would repeal the 17th Amendment. Can an amendment to the Constitution itself be unconstitutional? Yes, that one. If you read Madison’s notes from the constitutional convention, they spent more time arguing over the make-up of the federal government and they came up with the federal table. There would be three entities at the federal table. There would be the nation as a nation, there would be the people, and there would be the states. The nation as a nation is the president, the people is the House of Representatives, and the states is the Senate, because states sent senators. Not the people in the states, but the state government. When the progressives, in the Theodore Roosevelt/Woodrow Wilson era, abolished this it abolished bicameralism, the notion of two houses. It effectively just gave us

⁸⁷ Interview by author. Personal interview. Washington, D.C., July 10, 2013.

another house like the House of Representatives where they didn't have to run as frequently, and the states lost their place at the federal table.⁸⁸

Critics such as this argue repeatedly that states have lost their representation and influence on the national level, yet the Senate partakes in many issues that have no direct impact or bearing on states independently. The Senate has the sole responsibility of appointing federal judges, authorizing cabinet positions and ratifying treaties. This allows for federalism and a better system of national representation to occur.

The rise of the Tea Party in 2010 increased calls for repeal of the 17th Amendment. National organizations, such as the American Legislative Exchange Council joined the movement as well, supporting draft legislation like the Equal State's Enfranchisement Act, which would amend state constitutions to allow state legislatures to nominate individuals for placement on general election ballots. U.S. Senator Mike Lee of Utah, who delivered the 2014 Tea Party State of the Union response, has said in the past that he feels the 17th Amendment was a complete mistake, saying he does "think that we lost something when we adopted it."⁸⁹ Former Congressman Pete Hoekstra of Michigan, and fellow Tea Party Caucus member, shares Senator Lee's perspective. During his 2012 race for the U.S. Senate against incumbent Senator Debbie Stabenow, Rep. Hoekstra expressed his support for repealing the 17th Amendment, by saying, "I think that would be a positive thing...the direct election of U.S. senators made the U.S. Senate act and behave like the House of Representatives. The end result has led to an erosion of states' rights."⁹⁰

⁸⁸ Damon W. Root, Reason, "Injustice System," <http://reason.com/archives/2010/04/08/injustice-system/print> (accessed June 20, 2013).

⁸⁹ Charles Riley, "Repeal 17th Amendment," CNN, July 10, 2010, <http://politicalticker.blogs.cnn.com/2010/07/10/repeal-17th-amendment/>.

⁹⁰ Shira Toeplitz, "Michigan: Pete Hoekstra Not a Fan of 17th Amendment," Roll Call, August 13, 2012, <http://www3.atr.rollcall.com/michigan-pete-hoekstra-not-a-fan-of-17th-amendment/>.

Missouri State Representative Stephen Webber, a Democrat, explained in an interview how he felt the 17th Amendment allowed the U.S. Senate to be a better ideologically representation of his state, rather than simply be a mundane mirror of the state legislature. He explained this by saying, “in recent Missouri political history, we’ve had a U.S. Senator from a different party than what our state legislature was controlled by. In the late 90s we had a Republican Senator in John Ashcroft, while Democrats controlled the legislature. Today, we have Claire McCaskill in the Senate while Republicans control the state legislature. We definitely have individuals chosen by the citizens of Missouri that would be different were the 17th Amendment not in place.” He also argues that without the amendment, an increase in special interest money and bribery would not only be bad for the integrity of the body, but also for party strength as well. Various factions within both the Democrat and Republican Party would become, in his view, “even more isolated and hostile. Deals would be cut left and right creating partisan bickering that would be on a much greater level than even exists today. Imagine what would happen with a Republican legislature divided with Tea Party Republicans on one side and Traditional Republicans on another. The 17th Amendment prevents us from having to see that scenario play out.”⁹¹

Over the past one hundred years since the amendment went into effect state legislatures have tended to be more conservatively controlled. The research conducted by Bybee illustrates that this has made the legislative history of the United States look much different from what it otherwise would have. Republicans would have controlled the U.S. Senate much more regularly than Democrats.⁹² In their work *The Effect of the 17th*

⁹¹ Interview by author. Personal interview. Washington, D.C., June 30, 2014.

⁹² Bybee, “Ulysses at the Mast...”Pg. 551.

Amendment on the Party Composition of the Senate: A Counterfactual Analysis, authors Wendy Schiller and Charles Stewart downplay this argument to an extent, saying that the 17th Amendment did not affect which party controlled the Senate for long periods, but instead it did affect the size of the majorities Republicans and Democrats have had since 1913.⁹³ At the time of this research there are twenty-seven Republican-controlled Legislatures, eighteen-Democratic-controlled Legislatures and five equally divided. This means that had the 17th Amendment never been implemented, the Republicans would currently have at least fifty-four seats and control of the Senate, giving their party the ability to defeat and defund legislation like the Affordable Care Act, the American Recovery and Reinvestment Act of 2009 and other legislation they viewed unfavorably. Similarly, it would change the dynamic of the current filibuster debate in the United States, shifting which party would be most likely to use it and potentially changing the volume of cloture calls being invoked. This is an important notion to keep in mind as to why those on the far right of the political spectrum and like-minded pundits argue for the repeal of the 17th Amendment. The argument that Judge Andrew Napolitano and others make for this being an assault on the infrastructure of constitutional government is that the end result is not a true national reflection given the political makeup of the Senate.⁹⁴ Changes in the growth of the federal government have much less to do with the 17th Amendment and the vanishing of state's rights and more to do with how the United States has changed since 1913. Population growth, technological advancements, and America's leadership role explains infrastructural changes in the Constitutional Government, not changes brought on by the 17th Amendment.

⁹³ Charles Stewart, Wendy Schiller, MIT Political Science, "The effects of the 17th Amendment on the Party Composition of the Senate:" A Counterfactual Analysis," MIT, 2011, Pg. 37.

⁹⁴ Root, "Injustice System."

The views of representatives interviewed here indicate that most state legislatures, regardless of party, are content with less national attention and potentially a more engaged citizenry. The 17th Amendment creates a political shield between them and the negative qualities of politics in an increasingly divided nation. A North Carolina Democratic Representative in the General Assembly summed up his feelings on the matter by saying, “the amendment allows things to actually get brought forward and voted on in the states. More often than not bills are passed on importance and accomplishment, rather than by who has the deepest pockets.”⁹⁵ This also allows for states to generally have state legislatures more easily controlled by one party at a time, and for legislation and initiatives to actually be enacted. It is clear that state legislation actually does get passed compared to the stalemates and partisan bickering that occurs in Congress. For example, the 112th Congress of the United States passed only 561 bills from 2011 to 2012.⁹⁶ When compared to the New York State Legislature, a professional, full-time legislature, that passed 679 bills in the 2011 legislative session alone, one can see the increased issue of partisanship that exists on the federal level.⁹⁷ While those on the far right may call for repeal of the Amendment, it appears that the bulk of Republicans and Democrats recognize that it allows them to conduct their business within States while avoiding much of the corruption and negative aspects associated with national politics.

⁹⁵ Interview by author. Personal interview. Washington, D.C., July 10, 2013.

⁹⁶ Chris Cillizza, “The least productive Congress Ever,” The Washington Post, July 17, 2013, <http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/17/the-least-productive-congress-ever/>.

⁹⁷ Bill Mahoney, “2012 Legislative Session Analysis,” New York Public Interest Research Group, 2012, <http://www.nypirg.org/media/releases/goodgov/NYPIRG%202012%20Session%20Analysis.pdf>.

Conclusion

The information presented from current state legislators concludes that the 17th Amendment allows representatives on the state level to effectively carry out their duties as lawmakers without increased distractions that come from campaign finance and special interest money, which would be likely were they still tasked with the responsibility of appointing United State senators. Furthermore, their sentiment seems to be that the 17th Amendment had little to no effect on the relationship between their legislative bodies and the constituents they represent. This is different from the original hypothesis, which predicted that the 17th Amendment and the removal of senatorial appointment would have decreased constituent interest in their state representatives. While it was anticipated that members of state legislatures would be much more inclined to support overturning or reforming the 17th Amendment in order to increase their role in the federal government and increase constituent attention in their matters, this study reveals that state legislators seem much more concerned with being productive within their respective bodies than dealing with increased volumes of national attention and scrutiny, which plagues their federal counterparts. This research also concluded that arguments in favor of overturning the 17th Amendment are more for political, ideological reasons, rather than concerns over the functionality and influence of state legislatures.

This study relied heavily on prior, scholarly works on the 17th Amendment and this research's analysis of the views of political figures on the state and federal level. This data was used to develop an understanding of the different views and opinions of elected officials concerning the 17th Amendment's impact on citizen involvement with their state legislatures. Future research could magnify this examination, by looking at voter turnout

rates in state legislative elections in the years prior to and after the enactment of the 17th Amendment in 1913, to reveal any decrease in the number of voters. Since ballots that include state legislatures would most likely include national races, it would be important to examine voting results in specific state races, and how those vote totals for the same seat vary over time. A good recommendation for examining such figures would be to do so over a period of time that includes several ballots from presidential and midterm elections around 1913; for example examining 1904-1922 would allow any impact from the 17th Amendment in voter participation in specific state election to be seen in presidential and midterm elections before and after the amendments enactment. Limited election results made available by state governments had proved difficult to gather, which is why it is not included in this study.

Future studies could include more extensive interviews with additional legislators. This could be done in the form of a poll asking legislators to express their views on the original intent of the Senate as the representative body of the States, compared to direct election by the people. Their views on the potential dismantlement of the 17th Amendment and the resulting impact, would allow for an expansion into this study's findings regarding support for the "repeal the 17th Amendment" movement. Ideological or economic trends among legislators would reveal why some conservatives support repeal while others do not.

Ultimately, this study concludes that the 17th Amendment does create inadvertent effects on the role of state legislators. However, those effects allow legislatures to conduct their business in an environment that minimizes outside influences and allows them to vote on legislation with the best interest of their constituents in mind. It also

allows for a U.S. Senate that is a better representation of the political makeup of the nation, rather than a representation of only state legislatures.

Chapter 3

The Impact of Initiatives and Referendums on State Legislatures

Introduction

In a 1920 speech, William Jennings Bryan stated, “We have the initiative and referendum in Nebraska; do not disturb them. If defects are discovered, correct them and perfect the machinery. Make it possible for the people to have what they want. We are the world’s teacher in democracy, the world looks to us for an example. We cannot ask others to trust the people unless we are ourselves willing to trust them.”⁹⁸ A strong supporter of popular democracy and the Progressive Movement, Bryan saw ballot measures as a way to circumvent the corruption found in state legislatures in the early 20th Century and give the people direct control over laws and changes they deemed necessary. In the early 1900s, ballot measures were used in states across the United States to pass laws for woman’s suffrage, presidential primaries, wage and hour laws, child labor act, and to regulate banks, railroads and utilities among others.⁹⁹ It is unlikely however, that Bryan could have foreseen the evolution of ballot measures into what today is often referred to as the initiative industry.

This research will explore and examine the question: Do ballot initiatives and referendums hurt or inhibit the role of state legislatures? This examination will explore the historical context and various functions of initiatives and referendums in the United States. It will also identify distinct periods of functionality of ballot measures, and when the initiative industry really started in the United States. Building upon previous research, this study will be able to identify what affects if any, the initiative industry and direct

⁹⁸ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., “Dangerous Democracy?: The Battle Over Ballot Initiatives in America,” Rowman & Littlefield, 2001, Pg. 172.

⁹⁹ David S. Broder, “Democracy Derailed: Initiative Campaigns and the Power of Money,” Harcourt, 2000, Pg. 43.

democracy itself has had on state legislatures in the modern era of ballot measures. This important question will help to expand our understanding of ballot measures and if they are useful or harmful in this modern era. It is anticipated that this research will reveal that both the initiative industry and uninformed citizen involvement in ballot measures negatively affects state legislatures.

Types of Ballot Measures

Initiatives and referendums are actions in which measures can be placed on ballots so that public citizens can vote directly on an issue. While the two processes do vary, they both are examples of direct democracy where the people decide on the outcomes of policies.

The initiative process, also known as ballot initiatives, gives voters the ability to propose a legislative measure, with a statutory initiative, or a constitutional amendment, with a constitutional initiative, by filing a petition that requires a specific amount of valid citizen signatures. There are two types of initiatives that states can adopt, with the first being direct initiatives. These are proposals where once the minimum amount of signatures has been gathered it is placed directly onto the next ballot for a statewide vote. The second is indirect initiatives, in which proposals, once the required number of signatures is gathered, are sent to the legislature. From there, the state legislature has the opportunity to act on the initiative. They can choose to reject it, vote on a different proposal, or take no action at all and place the initiative on the ballot for the public to vote on.¹⁰⁰

¹⁰⁰ National Conference of State Legislatures, "Initiative, Referendum and Recall," <http://www.ncsl.org/research/elections-and-campaigns/initiative-referendum-and-recall-overview.aspx>.

Initiative processes have been included in the constitutions of twenty-four states, allowing for some type of statutory or constitutional initiative. All of these states have their own variation of the initiative process, but revolve around the same general actions. The first step is having a petition filed with the designated state official. The official varies from the Secretary of State in some situations to Attorney Generals and even the Lieutenant Governor in Utah.¹⁰¹ The petition is then reviewed for compliance with either the statutory or constitutional initiative requirements. The language of the proposal is also checked, to ensure that intent and purpose of the proposal is accurate. The next step involves the preparation of a ballot title and initiative summary.¹⁰² Many see this as one of the most important steps in the initiative process, since it decides the name and summary of the proposal that will appear before the voters. Once again, while there is a wide variation among the states on procedures, the majority involves review and approval by an elected official (most often the Attorney General) or some type of Ballot Title Board.¹⁰³ After approval, the petition can be circulated to gather the required number of voter signatures designated by each state. Then the petition is sent to the state election official who will verify the signatures and, depending on that state's process, determine if the initiative is valid to be placed on the ballot or sent to the state legislature, depending on that state's process.¹⁰⁴

The referendum process also has several different forms. Just like initiatives, they are used to foster measures towards appearing on ballots. Popular referendums are very similar to initiatives, requiring a specific amount of signatures to be gathered in order for

¹⁰¹ National Conference of State Legislatures, "Drafting The Initiative Proposal," <http://www.ncsl.org/research/elections-and-campaigns/drafting-initiatives.aspx>.

¹⁰² National Conference of State Legislatures, "Preparation of a Ballot Title and Summary," January 2002, <http://www.ncsl.org/research/elections-and-campaigns/preparation-of-a-ballot-title-and-summary.aspx>.

¹⁰³ National Conference of State Legislatures, "Preparation of a Ballot Title and Summary."

¹⁰⁴ Ibid.

a popular vote to take place. One important difference however, is that popular referendums are used to approve or deny an act that the legislature has already approved. In most states where this is allowed, citizens usually have around a 90-day comment period after the law has been passed to petition and gather signatures.¹⁰⁵ Similarly to initiatives, once the minimum for signatures has been reached and verified, the new law will not take effect as scheduled, but rather will appear on the ballot for a popular vote. If accepted the law can take effect as scheduled, but if rejected it is deemed void. The law would also not take effect in the time between passage and the popular vote if the petition has been verified. Twenty-three states and the U.S. Virgin Islands allow for popular referendums, with Maryland and New Mexico being the only ones that do not also allow some type of initiative.¹⁰⁶

Legislative referendums allow state governments to refer measures on their own accord to ballots for a popular vote. Many states require this to be done for changes to state constitutions, tax code changes, and other measures. These are usually seen as much less controversial than popular referendums, which are more likely to involve citizen proposals on a controversial matter. Every state legislature can use a legislative referendum to have a measure appear on a ballot.¹⁰⁷

The final type of referendum is the advisory referendum. It allows legislatures and governors to place questions on ballots in order to get voter opinions on proposed laws or measures that might be taken up or considered by the state government. It is important to note that there is no binding effect from an advisory referendum; rather they

¹⁰⁵ National Conference of State Legislatures, "Initiative, Referendum and Recall."

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

are used solely as a tool to counsel or make recommendations to state officials as to the disposition of the people on a matter.¹⁰⁸

Federalists v Anti-Federalists

The debate over initiatives is one that has been happening in the United States since it's founding. Arguments regarding direct and representative democracy, and the extent to which they should be allowed were widespread in the new nation from 1787 to 1788 as ratification of the Constitution was being debated.¹⁰⁹ Anti-Federalists opposed the Constitution, believing rather that direct democracy should be the prevalent form. They sought to give more power to a populous that had just thrown off the chains of monarchy and supported the Articles of Confederation. Federalists supported the proposed republican structure of the Constitution, and the representation that it provided for citizens. James Madison, Alexander Hamilton, John Jay and other Federalists envisioned America developing beyond an agrarian society into a large, diverse commercialized nation in what would become a globalized world.¹¹⁰

Federalists wanted to protect minority factions, which would be created in such a large society, from being oppressed in a direct democracy where the majority could rule legislatively. Madison recognized many of the Anti-Federalists fears with representative democracy, and the possibility that “sinister” men could take power.¹¹¹ He addressed this fear and how to prevent it in Federalist 10 saying:

The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations: In the first place, it is to be

¹⁰⁸ Ibid.

¹⁰⁹ The Economist, “Direct Democracy: Origin of the Species,” April 20, 2011, <http://www.economist.com/node/18548119>.

¹¹⁰ Clinton Rossiter, ed., “The Federalist Papers,” Signet Classic, 1961, Pg. vii.

¹¹¹ Clinton Rossiter, ed., “The Federalist Papers,” Pg. 72.

remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude... In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried...¹¹²

Anti-Federalists viewed this expansion as a violation to the people and state's rights. They saw the consolidation of power in the national government as an infringement of individual liberties, with the possibility that a strong centralized government reflected monarchic power. Individuals labeled as Anti-Federalists considered themselves the true Federalists, and began writing essays and letters to counter the Federalist Papers.¹¹³ This uncoordinated effort became known as the Anti-Federalist Papers, and included such prominent citizens as George Clinton, Robert Yates and Richard Henry Lee.¹¹⁴ Patrick Henry was another prominent opponent of the Constitution, giving fiery speeches in which he called for direct representation. In a 1788 speech entitled *Shall Liberty or Empire Be Sought?* Henry declared, "This, sir, is the language of democracy – that a majority of the community have a right to alter government when found to be oppressive. But how different is the genius of your new Constitution from this! How different from the sentiments of freemen that a contemptible minority can prevent the good of the majority!"¹¹⁵

It is interesting then, since it is universally considered that Federalist and representative democracy won this debate with the ratification of the Constitution, that

¹¹² Ibid. Pg. 76.

¹¹³ ¹¹³ The Economist, "Direct Democracy: Origin of the Species."

¹¹⁴ Jackson Turner Martin, "The Antifederalists: Critics of the Constitution, 1781-1788," The University of North Carolina Press, 1961, Pg. 113.

¹¹⁵ Patrick Henry, "Shall Liberty or Empire Be Sought," Patrick Henry Center, 1788, <http://www.patrickhenrycenter.com/Speeches.aspx#EMPIRE>.

more than two centuries later ballot measures would be so popular. It should be noted that while Federalists supported representative democracy, there are references in the Federalist Papers to the role of the people as an enhancement to checks and balances, taking advantage of the true power in a republic, the people. James Madison expressed this sentiment in Federalist 49, stating: “As the people are the only legitimate fountain of power, and it is from them the constitutional charter, under which the several branches of government hold their power is derived, it seems strictly consonant to the republican theory to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others.”¹¹⁶ In this essay, Madison is arguing that the people should be treated as a safeguard against the encroachment of government branches, ensuring that they obey their designated function. This hints to a commonality between Federalists and Anti-Federalists on the function of representation, and helps explain the progression of ballot measures and direct democracy in the U.S.

History of Ballot Measures

Even before the United States existed, citizens in towns across New England colonies would have town hall meetings in a referendum-style process to decide on laws and ordinances. Thomas Jefferson was an early advocate of the process in his home state of Virginia, recommending referendums to be included in the 1775 Virginia state constitution.¹¹⁷ While that recommendation fell short, states like Georgia (1776),

¹¹⁶ Clinton Rossiter, ed., “The Federalist Papers,” Signet Classic, 1961, Pg. 310.

¹¹⁷ M. Dane Waters, “A Brief: The History of the Initiative and Referendum Process in the United States,” The I and R Institute, Pg. 2, <http://www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Quick%20Facts/History%20of%20I&R.pdf>.

Massachusetts (1778), New Hampshire (1792), Connecticut (1818), Maine (1819), New York (1820) and Rhode Island (1824) all mandated referendums for constitutional approvals of changes.¹¹⁸ This in turn, led to the U.S. Congress making legislative referendums for constitutional changes mandatory in 1857 for all new states joining the United States. Today, every state's constitution with the exception of Delaware requires voter approval for constitutional amendments.¹¹⁹

The Progressive movement of the late 19th and early 20th century served as a catalyst for ballot initiatives and popular referendums. It was during this time that citizens across the nation were becoming deeply dissatisfied with government corruption and an inherent failure to address the concerns and wishes of the people. While their platforms focused on a variety of topics, a primary one was the establishment of these ballot measures as a way for citizens to push for needed reforms that were being blocked by state legislatures. Nebraska, in 1897, was the first state to allow cities to have initiatives and referendums in their charters.¹²⁰ They were followed a year later by South Dakota, who was the first state to adopt a statewide process for initiatives and referendums on November 5, 1898. They were soon followed by Utah (1900), Oregon (1902), Montana (1904), Oklahoma (1907), Maine (1908) and Michigan (1908).¹²¹

¹¹⁸ Ibid.

¹¹⁹ M. Dane Waters, "A Brief: The History of the Initiative and Referendum Process in the United States," Pg. 2.

¹²⁰ M. Dane Waters, "A Brief: The History of the Initiative and Referendum Process in the United States," Pg. 2.

¹²¹ Initiative & Referendum Institute, "State-by-State List of Initiative and Referendum Provisions."

Table 6 - State Initiative and Referendum Provisions¹²²

State	Date Adopted	Type of Process Available		Type of Initiative Process		Initiative Process for Constitutional Amendments		Initiative Process for statutes	
		Initiative	Referendum	Amendment	Statute	Direct	Indirect	Direct	Indirect
SD	1898;1972; 1988	Yes	Yes	Yes	Yes	Yes	No	Yes	No
UT	1900; 1917	Yes	Yes	No	Yes	No	No	Yes	Yes
MT	1904; 1972	Yes	Yes	Yes	Yes	Yes	No	Yes	No
MS	1904; 1992	Yes	No	Yes	No	No	Yes	No	No
OR	1902	Yes	Yes	Yes	Yes	Yes	No	Yes	No
NV	1905	Yes	Yes	Yes	Yes	Yes	No	No	Yes
OK	1907	Yes	Yes	Yes	Yes	Yes	No	Yes	No
ME	1908	Yes	Yes	No	Yes	No	No	No	Yes
MI	1908	Yes	Yes	Yes	Yes	Yes	No	No	Yes
MO	1908	Yes	Yes	Yes	Yes	Yes	No	Yes	No
AR	1910	Yes	Yes	Yes	Yes	Yes	No	Yes	No
AZ	1911	Yes	Yes	Yes	Yes	Yes	No	Yes	No
CA	1911	Yes	Yes	Yes	Yes	Yes	No	Yes	No
NM	1911	No	Yes	No	No	No	No	No	No
CO	1912	Yes	Yes	Yes	Yes	Yes	No	Yes	No
ID	1912	Yes	Yes	No	Yes	No	No	Yes	No
NE	1912	Yes	Yes	Yes	Yes	Yes	No	Yes	No
OH	1912	Yes	Yes	Yes	Yes	Yes	No	No	Yes
WA	1912	Yes	Yes	No	Yes	No	No	Yes	Yes
ND	1914	Yes	Yes	Yes	Yes	Yes	No	Yes	No
MD	1915	No	Yes	No	No	No	No	No	No
MA	1918	Yes	Yes	Yes	Yes	No	Yes	No	Yes
AK	1956	Yes	Yes	No	Yes	No	No	No	Yes
WY	1968	Yes	Yes	No	Yes	No	No	No	Yes
IL	1970	Yes	No	Yes	No	Yes	No	No	No
FL	1972	Yes	No	Yes	No	Yes	No	No	No
Totals	26 states	24 states	23 states	18 states	21 states	16 states	2 states	14 states	9 states

The populist movement and the notion of reform had especially taken hold in western states.¹²³ The elected class and elites in Southern and Eastern states were much more hesitant to enact amendments, out of fear that African-Americans or immigrants would use the new political power to enact reforms not consistent with their beliefs.¹²⁴ Similarly, growing concerns regarding German sympathizers and immigrants in the United State prior to World Wars I and II, led to a decline in support for initiative and popular referendums in this time.¹²⁵ It would not be until Alaska was admitted to the Union in 1959 that another state adopted the policy as part of their Constitution. The initiative process as a whole, declined from 293 proposals from 1911-1920 to only 87

¹²² Initiative & Referendum Institute, "State-by-State List of Initiative and Referendum Provisions," http://www.iandrinstitute.org/statewide_i&r.htm.

¹²³ M. Dane Waters, "A Brief: The History of the Initiative and Referendum Process in the United States," Pg. 3.

¹²⁴ Ibid.

¹²⁵ M. Dane Waters, "A Brief: The History of the Initiative and Referendum Process in the United States," Pg. 4.

proposals from 1961-1970.¹²⁶ This trend was certainly impacted by factors such as major wars and the Great Depression, but was quickly reversed in 1978 with California's Proposition 13. This initiative was used to cut property taxes from 2.5% of market value to just 1%, receiving close to a 65% favorable vote with 70% of California's electorate participating.¹²⁷ Since then there has been a noticeable uptick in proposals, with 271 from 1981-1990, and 389 from 1991-2000.¹²⁸

Previous Research on Initiatives and Referendums

The history of ballot measures is generally divided into three distinct periods. The first is the "Progressive movement era," when states began allowing citizen-led proposals to be placed on ballots, and referendums increased in popularity as a tool to enact reform. Scholars generally think of this period stretching from 1898-1940.¹²⁹ The second is referred to as the "middle era" of ballot measures. This represents the period between the U.S. entering World War II in 1941 up until the passage of Proposition 13 in 1978. It was during this time that the use and popularity of ballot measures as a political tool declined.¹³⁰ The final stage, and the one this paper will examine, is the "modern age" of ballot measures. This is the period from 1978 to today, and includes the resurgence of ballot initiatives and referendums as a tool to influence states more directly in terms of fiscal and social changes.¹³¹

¹²⁶ M. Dane Waters, "A Brief: The History of the Initiative and Referendum Process in the United States," Pg. 8.

¹²⁷ Peter Schrag, "Paradise Lost: California's Experience, America's Future," University of California Press, 1998, Pg. 9.

¹²⁸ M. Dane Waters, "A Brief: The History of the Initiative and Referendum Process in the United States," Pg. 8.

¹²⁹ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 13.

¹³⁰ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 15

¹³¹ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 20.

There are two distinct views towards existing research and scholarly works concerning this modern age of ballot measures. The first considers ballot initiatives and referendums as a detriment to state governments in the United States. This group argues that the “corporatization” of ballot measures turns them into yet another weapon for organizations with deep pockets to control public sentiment and implement policies, without the greater review and possibly rejection in state legislatures. Washington Post columnist and author of *Democracy Derailed: Initiative Campaigns and the Power of Money*, David Broder, adheres to this view, and considers this modern age of ballot initiatives to be a danger to America’s system of government. He and other researchers argue that since 1978, the use of ballot measures have been taken over by special and corporate interest entities, which use the measures in a regressive like manner.¹³² Broder argues that these proposals have inspired massive sums of money from special interest backers with deep pockets creating what some refer to as the initiative industry, where financiers help proposals gain support on the state level to implement changes they support.¹³³ This in turn, bypasses many of the checks and balances that were intended for the state governments, primarily between state legislatures and governors. At a book forum in 2000 he stated that the Founders were more intent on protecting freedom than on guaranteeing government efficiency, and did not include ballot initiatives for specific reasons. He argued that:

They wanted to be very sure that minority rights, including property rights were protected. And they wanted to be very sure that, before a new statute was enacted there was a genuine consensus in society that the law was needed. Most of those

¹³² David S. Broder, “Democracy Derailed: Initiative Campaigns and the Power of Money,” Pg. 169.

¹³³ Ibid.

checks and balances, except for the final step of judicial review are missing from the initiative process.¹³⁴

In his research he found that during the 1998 election cycle, \$250 million was spent on ballot measures at the state level. This is \$100 million more than was given to the three presidential candidates at the same time by taxpayers, and shows just how significant, money-driven and politicized ballot initiatives have become since 1978.¹³⁵

This question of checks and balances associated with ballot measures is also addressed by Bruce Cain and Kenneth Miller in *Dangerous Democracy?: The Battle over Ballot Initiatives in America*. They argue that instead of threatening existing checks and balances, referendums actually complement them by allowing approval or rejection by the people at the ballot box to enhance the checks already in effect by legislatures and governors.¹³⁶ However, Cain and Miller as well as other scholarly works, agree with Broder that initiatives do weaken checks and balances and in essence undermine the representative government.¹³⁷ They argue that it limits a state legislature's ability to set and pursue policy agendas and ultimately make hard decisions, creating an alternative to representative government.¹³⁸ Where a proper democratic system offers opportunities for refinement, consensus building, compromise and informed deliberation on legislation, initiatives do not. Initiatives do not go through the process of committee hearings, briefings, town hall events and constituent's contacting their elected representatives.

¹³⁴ David S. Broder, "Do Ballot Initiatives Undermine Democracy?," Cato Policy Report, 2000, <http://www.iandrinstitute.org/New%20IRI%20Website%20Info/I&R%20Research%20and%20History/I&R%20Studies/Cato%20-%20Policy%20Forum%20Do%20Ballot%20Initiatives%20Undermine%20Democracy%20IRI.pdf>.

¹³⁵ David S. Broder, "Do Ballot Initiatives Undermine Democracy?"

¹³⁶ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Rowman & Littlefield, 2001, Pg. 41.

¹³⁷ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Rowman & Littlefield, 2001, Pg. 43.

¹³⁸ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 43.

Likewise, they do not have to have another house of a state's legislature to review it, offer potential alternatives and then reconcile them in a conference committee. Finally, they do not have to go before a governor for a final approval or veto. Cain and Miller also explain how the expertise offered to representatives by specialized staffers, lobbyists and others provide proficient analysis that private citizens voting on an initiative ballot generally do not have.¹³⁹

Other scholarly works take a contrasting view of the issue, supporting ballot measures as a way to enhance government in the United States. Dane Waters, founder and co-chairman of the Initiative and Referendum Institute at the University of Southern California, sees the initiative process as vital to reform. Waters and like-minded researchers see ballot measures as an effective tool to curb the power and often ineptitude of state legislatures, and the reason why many politicians are introducing legislation that would limit their role. While Broder sees the initiative industry as unregulated, Waters asserts that it is one of the most regulated systems of ballot measures in the world.¹⁴⁰ As highlighted earlier, the proposal process that states require for ballot initiatives and referendums varies from state to state with each having their own specific guidelines. They vary from what specific issues proposals can be brought forward on, the size and font of petitions, how many signatures are needed, deadlines, and many more details. He argues that the money going towards these measures from the initiative industry makes a meniscal impact when compared to the amount of initiatives being introduced that are not being promoted by special interests. While 40% of all initiatives that were placed on

¹³⁹ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Rowman & Littlefield, 2001, Pg. 45.

¹⁴⁰ M. Dane Waters, "Do Ballot Initiatives Undermine Democracy?," Cato Policy Report, 2000, <http://www.iandrinstitute.org/New%20IRI%20Website%20Info/I&R%20Research%20and%20History/I&R%20Studies/Cato%20-%20Policy%20Forum%20Do%20Ballot%20Initiatives%20Undermine%20Democracy%20IRI.pdf>.

ballots in California from 1986 to 1996 passed, only 14% of those passed had special interest support.¹⁴¹

Waters and other scholars who support ballot measures view them as an additional check on state governments, essentially replacing the original check of elections and allowing citizens to promote a specific view on one issue without having to vote against a representative they support who may oppose it.¹⁴² From the implementation of ballot measures to the year 2000, roughly 800 laws went into effect through the initiative process.¹⁴³ Considering most state legislatures pass around 1,000 laws per year, scholars of this persuasion do not see them as an overwhelming threat.¹⁴⁴ They view them rather as a complement to representative government, balancing state legislature's ineffectiveness to often react when needed on one singular issue.

Evidence and Methods of Analysis

This study will look at examples of ballot measures from across the United States. As mentioned earlier, it will build upon previous research in examining how financial funding for corporate or special interest backed proposals compares across the history of the mechanisms, and determine whether that is a valid threat to the capabilities and function of state legislatures. Examining a wide cross section of these ballot measures, and their impact post-enactment will also allow for a better understanding of the capabilities for direct government possessed by constituents.

Polling data associated with the level of understanding voters have towards various initiatives and referendums will help illustrate whether the general public has the

¹⁴¹ M. Dane Waters, "Do Ballot Initiatives Undermine Democracy?."

¹⁴² Thomas E. Cronin, "Direct Democracy: The Politics of Initiative, Referendum, and Recall," Harvard University Press, 1989, Pg. 92.

¹⁴³ M. Dane Waters, "Do Ballot Initiatives Undermine Democracy?,"

¹⁴⁴ Ibid.

intellectual premise and ingenuity to fully understand a proposal's impact before casting a vote. Proposition 13 in California for example, showed that 38% of voters did not think that the proposal would have any impact on state services or the size of government. After it was enacted however, \$6 billion in annual revenue from local governments disappeared, and the state legislature in Sacramento had to cut funding and services for basic health, education and welfare programs.¹⁴⁵

As with the previous studies, this paper will use the term "state legislature" as the generic term for all state-level legislative bodies within the United States. While a majority of states do refer to their legislative bodies as state legislatures, there are several who use the terms general assemblies or courts. Regardless, all state legislative branches will be referred to as state legislatures throughout these findings. This research also uses the term ballot measures as an all-encompassing term for both ballot initiatives and referendums. It is used to describe any measure placed on a ballot in which voters can use a popular vote to decide upon a new proposal or legislatively passed law.

Results

In the collection of research on initiatives presented in *Dangerous Democracy?: The Battle over Ballot Initiatives in America*, researcher Howard Ernst of the U.S. Naval Academy examined a comparison of usage and passage rates of initiatives across the three periods of time comparing the four potential outcomes of proposals supported or opposed by special/corporate interests and proposals supported or opposed by a non-special/corporate interest. The study involved looking at statewide initiative campaigns in the United States from 1898 to 1995. This information refers to special/corporate

¹⁴⁵ David S. Broder, "Democracy Derailed: Initiative Campaigns and the Power of Money."

Table 7 - Support and Opposition in Initiatives¹⁴⁶

Side in Support	Side in Opposition	Definition	Examples
Special Interest	Special Interest	An initiative proposed by a labor or corporate interest that is opposed by another labor or corporate interest.	<ul style="list-style-type: none"> • Restricting a workers right to strike • Labor interests proposing a minimum-wage increase
Special Interest	Other	An initiative proposed by a labor or corporate interest that is opposed by a non-special interest group.	<ul style="list-style-type: none"> • Gambling industry attempting to legalize gambling in a state • Mining industry attempting to reduce environmental regulations
Other	Special Interest	An initiative proposed by a non-special interest group, that is opposed by a labor or corporate interest.	<ul style="list-style-type: none"> • Attempts to increase environmental regulations of a specific industry • Attempts to place taxes on the tobacco industry
Other	Other	An initiative in which neither side is represented by a labor or corporate interest.	<ul style="list-style-type: none"> • Extending suffrage rights to women. • Term limit initiatives • Campaign finance reform

interest campaigns as attempts to secure or protect material rewards for a select group in society.¹⁴⁷ Those classified as other, or non-special/corporate interest, do not exhibit identifiable, narrow interests at stake (see Table 7).¹⁴⁸ He concluded that there are striking similarities across all three-time periods in terms of success rates and usage rates (See Table 8).¹⁴⁹ This ideology counters Broder's argument, and the notion that corporate executives are using unlimited finances, political consultants, direct-mail firms, television campaigns, and an army of paid signature gatherers to manipulate public sentiment to their benefit.¹⁵⁰ This study and similar scholarly works suggest that the fear of corporate influence on ballot measures has been overstated, indicating that initiatives supported by non-special/corporate interests historically have similar or higher passage rates than those of special interests.

¹⁴⁶ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 9.

¹⁴⁷ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 8.

¹⁴⁸ Ibid.

¹⁴⁹ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 25.

¹⁵⁰ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 26.

Table 8 - Use and Passage Rates of Initiatives¹⁵¹

Progressive Movement Era (1898-1940)		% of all Initiatives in Period	Passage Rate of Type
Side in Support	Side in Opposition		
Special Interest	Special Interest	35.40%	33.10%
Special Interest	Other	10.20%	26%
Other	Special Interest	10.50%	36%
Other	Other	44%	41.10%
The Middle Era (1941-1976)		% of all Initiatives in Period	Passage Rate of Type
Side in Support	Side in Opposition		
Special Interest	Special Interest	44.60%	34.80%
Special Interest	Other	10.20%	26.20%
Other	Special Interest	12%	22.40%
Other	Other	33.40%	53.60%
The Modern Era (1976-1995)		% of all Initiatives in Period	Passage Rate of Type
Side in Support	Side in Opposition		
Special Interest	Special Interest	36.40%	34.90%
Special Interest	Other	7.80%	28.10%
Other	Special Interest	12.20%	30%
Other	Other	43.50%	60.70%

In Ernst's study, the recent period since Proposition 13 actually appears very similar to the earlier periods, with passage rates being highest at 60.7% in groups where ballot initiatives consisted of opposing sides with neither group being represented by a labor or corporate interest.¹⁵² The lowest passage rate in the recent period was when a ballot initiative was supported by a labor or corporate interest group, and opposed by another a non-labor or corporate group, with a 45% passage rate.¹⁵³ Ernst acknowledges that the cultivation of the initiative industry since Proposition 13 and the absence of party identification, name recognition, and other voting heuristics are likely to have fostered financial-backed special interests unfavorably in the process. However, his findings conclude that this ideology has been exaggerated, with labor or corporate interest group supported positions on initiatives actually having less success when compared to those involving citizen-oriented groups.¹⁵⁴ Resource advantages appear to not have been that

¹⁵¹ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 15.

¹⁵² Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 23.

¹⁵³ Ibid.

¹⁵⁴ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 26.

much of a factor, with special interest backed positions working at a disadvantage in initiative measures.

As the issues covered by ballot measures have changed in the modern period, the special interest's involvement in them has not. It also appears that just because initiatives do garner strong financial backing, they are not guaranteed to win, nor guaranteed that they are the only ones capable of creating a negative impression on a state or state legislature. A 1993 ballot initiative in Washington State nicknamed the "three-strikes, you're out" initiative mandated that three-time convicted felons be put behind bars for life without parole.¹⁵⁵ The measure did not have support from a labor or corporate interest group, but rather powerful rhetoric that spread through the state, igniting senses of emotion rather than facts. The initiative became law with a 75% majority because of the perception that felons were roaming the streets endangering the public.¹⁵⁶ Measures such as these erode functions of the judicial branch and the role that judges play in considering evidence and circumstances when passing sentences. The same is also true for government functions in other capacities. If initiatives are put forward for voters that ask questions such as "should a criminal be put away for repeat offenses" or "should taxes be kept low," the results are predictable without basis on research, facts, or the financial needs and constraint of the state. This hinders state legislature's ability to do their job, by having to account for the possibility that whatever issues they address may either be countered by a ballot measure, or by forcing them to deal with budget constraints or other limits because of enacted initiatives.

¹⁵⁵ Vanessa Barker, "The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders," Oxford, 2009, Pg. 118.

¹⁵⁶ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 28.

Ballot measures place the responsibility of learning about an issue on constituents, without any type of oversight or accountability to ensure they have the facts, as is the case with state legislatures. The general public only has 30-second commercials, bumper stickers, and questionable endorsements to help formulate their opinions, unless they aggressively seek out the facts.¹⁵⁷ This “voter incompetence” allows proposals, which could do considerable harm to a state’s economy, business, or civil liberties, to be passed without a full understanding. A Nevada ballot measure dealing with education for example, is coming up for a vote this November, and will decide if a business margins tax will be levied that is estimated to raise \$800 million a year for public education. The money however, is not guaranteed for education, and could be spent elsewhere if the state legislature deems necessary.¹⁵⁸ Voters likely do not have all of the information like Nevada Governor Brian Sandoval, who opposes the amendment since state education spending per student is expected to increase under new budgets from \$5,376 in 2012 to \$5,676 by the fall of 2014.¹⁵⁹ Despite that however, a poll conducted by the Retail Association of Nevada showed that the Education Initiative would likely pass with a slim majority. However, when the poll explained how the tax could impact business across the state by losing money, with no guarantee it would go to education, support fell to roughly 40%.¹⁶⁰

Ballot measures also create opportunities for legislators to defer to popular votes, rather than addressing issues within their halls or by gubernatorial review. In North

¹⁵⁷ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., “Dangerous Democracy?: The Battle Over Ballot Initiatives in America,” Pg. 66.

¹⁵⁸ Denis Myers, “Question 3,” Reno News & Review, July 10, 2014, <http://www.newsreview.com/reno/question-3/content?oid=14009924>.

¹⁵⁹ Ed Vogel, “Tax Battle in Nevada Shaping up for 2014,” Las Vegas Review-Journal, June 17, 2013, <http://www.reviewjournal.com/news/government/tax-battle-nevada-shaping-2014>.

¹⁶⁰ Ed Vogel, “Tax Battle in Nevada Shaping up for 2014.”

Carolina, a 2012 legislatively referred constitutional amendment known as Amendment 1 was accepted by popular vote with roughly 61% approving.¹⁶¹ The Amendment made it unconstitutional for the state of North Carolina to recognize or perform any same-sex marriages or civil unions. The language of the amendment as it was proposed and enacted to the state constitution reads:

Article XIV, Section 6: Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in the State. This section does not prohibit a private party from entering into contracts with another private party; nor does this section prohibit courts from adjudication the rights of private parties pursuant to such contracts.¹⁶²

North Carolina had already passed a state law in the legislature's 1995-1996 session, which defined same-sex marriages performed in or outside of North Carolina as being not valid.¹⁶³ Studies into the proposed legislative referendum found that its impacts were far more impactful than just same-sex marriage. The broad phrase "only domestic legal union" has already shown that it could impact the treatment of domestic-violence protections for unmarried people, adoption and child-visitation protections, and threaten same and opposite-sex couples and their children from receiving partner employment benefits.¹⁶⁴ A poll done by Public Policy Polling a few weeks before the measure came to a vote, found that only 40% of North Carolinians knew that the amendment would ban both same-sex marriage and civil unions.¹⁶⁵ Those who knew what the amendment would

¹⁶¹ Lucinda Shen, "United Church of Christ Challenges Gay Marriage Ban," Daily Tarheel, June 23, 2014, <http://www.dailytarheel.com/article/2014/06/united-church-of-christ-challenges-gay-marriage-ban>.

¹⁶² General Assembly of North Carolina, "Senate Bill 514," <http://www.ncleg.net/sessions/2011/bills/senate/pdf/s514v5.pdf>.

¹⁶³ General Assembly of North Carolina, "Chapter 51: Marriage," http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_51/Article_1.html.

¹⁶⁴ Samantha Oltman, "N.C.'s Amendment 1 Doesn't Just Screw Over Gay People," Mother Jones, May 8, 2012, <http://www.motherjones.com/mojo/2012/05/amendment-1-north-carolina-gay-people>.

¹⁶⁵ Tom Jenson, "Amendment One Still up 14 Points in N.C.," Public Policy Polling, May 1, 2012, http://www.publicpolicypolling.com/pdf/2011/PPP_Release_NC_050112.pdf.

do both socially and economically were against it by a 60% to 38% margin.¹⁶⁶ The amendment received major backlash from companies across North Carolina, who immediately began implementing protection policies to prevent the discrimination of both same and opposite sex couples affected by this amendment in their employment, especially benefits such as health care.¹⁶⁷

Amendment 1 received a majority vote in 92 of North Carolina's 100 counties.¹⁶⁸ While some supporters in those areas may have known of the overarching impact in the language of the amendment, it is safe to say based off of polling data that the majority did not. The constitutional referendum was placed on the ballot after Republicans took control of the state legislature for the first time in 140 years, creating a way for their party to use direct democracy as a way to confront voters with a topic covered in powerful rhetoric, which was capable of overshadowing all of the adverse effects the proposal enacted.¹⁶⁹

Granted, there are examples of ballot initiatives that do garner majority support and opposition where constituents voting do understand the measure, and its impact. It should be noted however, that such measures, which are supported based on merit and fact, could just as easily be brought before state legislatures at the behest of constituencies who can demonstrate the public support for the proposed legislation. A failure to act on these sentiments by their elected representatives in the state legislatures would most certainly impact their reelection chances, and signify the functionality of the

¹⁶⁶ Tom Jenson, "Amendment One Still up 14 Points in N.C."

¹⁶⁷ Margot C. Lester, "Biz Owners: Amendment One Could Harm Business, Economic Development," *The Carrboro Citizen*, April 19, 2012, <http://www.carrborocitizen.com/main/2012/04/19/biz-owners-amendment-one-could-harm-business-economic-development/>.

¹⁶⁸ Susan Dickson, "Orange Says 'No,' State Says 'Yes,'" *The Carrboro Citizen*, May 10, 2012, <http://www.carrborocitizen.com/main/2012/05/10/orange-says-no-state-says-yes/>.

¹⁶⁹ Associated Press, "Amendment One: North Carolina Votes on Gay Marriage," *Politico*, May 8, 2012, <http://www.politico.com/news/stories/0512/76037.html>.

democratic process. One of the original purposes of ballot measures was to counter what was seen as rampant corruption in state legislatures in the early 20th Century. Ballot measures, the 17th Amendment, and other actions were instituted in several states and nationally as way to create more accountability. However, in today's world where technology and the 24-hour news cycle have created a naturally evolving deterrence for politicians, there has become less of a need for such implementations. The modern age of ballot measures have proven to create nothing but an extra step in the legislative process that gambles on the comprehension of the voting public.

Three-term Missouri State Representative Stephen Webber is one of the many elected officials who recognize the impediments ballot measures create for state legislatures, but also the waste of time that addressing them consumes. In an interview Representative Webber stated, "We've also had the Missouri State Legislature go in and over turn ballot initiatives pretty frequently. So if a ballot initiative passes, and the state legislature disagrees with what it does, we've commonly had to go in the next session of congress and work to change or overturn it."¹⁷⁰ Not only does it appear that it creates constraints for legislatures to work within, but also requires these bodies to spend time working on added agenda items. Representative Webber also added, "We have a Democratic governor and a Republican legislature, so the Republican legislature has started using the referendum as a way to go around the governor because it doesn't require the bill to be signed. It's essentially a tool to achieve an end."¹⁷¹

¹⁷⁰ Interview by author. Personal interview. Washington, D.C., June 30, 2014.

¹⁷¹ Interview by author. Personal interview. Washington, D.C., June 30, 2014.

Conclusion

This research concludes that the initiative industry associated with ballot measures has not had any more of an adverse impact on state legislatures in the modern era than in the previous time periods. Additionally, examination of various ballot initiatives and referendums reveal that there is a distinct inadequacy on the citizenry in terms of a complete understanding of proposals and their impacts. This analysis reveals that ballot initiatives and popular referendums place state legislatures in a distinct disadvantage, in which they are placed at the behest of voters who do not have access to the same research, resources, hearings and an overall understanding of complex legislation and policy. These in turn impact a state legislature's ability to effectively plan budgets, appropriations and programs for their state's fiscal year. It also creates an opportunity for state legislatures to essentially defer to a popular vote on issues that might be seen as too controversial for them. As mentioned in the findings, where state legislatures have a wide array of research and investigative capabilities, the voting public tends to rely much more on opinionated rhetoric and limited research to base decisions. This creates an opportunity for state legislators to use legislative referendums to place responsibility for an issue on a public they know will ultimately vote accordingly. It also provides for a legislative pathway around gubernatorial review, where a legislature controlled by one party can effectively sidestep potential veto action taken by a governor who disagrees with them.

Future research on this subject can look more deeply into state's budgets and any possible fluctuation in terms of appropriations and funding for various social programs before and after the 1978 passage of Proposition 13. Since this period serves as the

fundamental changing point of ballot measures towards becoming a modern political tool, it will likely provide additional insight into exactly how much has changed for legislatures over this period. While the initiative industry itself will not have played more of a role than in previous periods, the increase of ballot measures combined with the proven ineptitude of the public to understand the lingering impact of such legislation would be interesting to examine.

Future studies could also look at how budgets and appropriations in states with ballot initiatives and popular referendums compares to states with similar demographics that do not employ them. This will further the understanding of their impact, and create a better visual for the capacity of state legislatures to function both with and without the influence of popularly elected legislation. It would also be interesting to hear from legislators in states without ballot initiatives and popular referendums to see if they feel their implementation would fill some type of void or need that no longer exists in states with the measures.

This research has helped establish how ballot initiatives impede the functionality of state legislatures by relying on public sentiment often based more on opinion than facts. While the role of ballot measure financing did not play as big a role in this impact as expected, it is clearly evident that modern initiatives and referendums do create unnecessary burdens that legislatures must shoulder while attempting to conduct their business.

Portfolio Conclusion

As this study is being written, the Pennsylvania General Assembly, a full-time legislature, is in a partisan battle over pension reform. It has placed the Governor of Pennsylvania in a position where he has felt obligated to cut a fifth of the legislature's allowance to incentivize them to address the issue, which has been stalled by partisan bickering.¹⁷² The North Carolina General Assembly is debating how to find solutions for coal ash disposal in the wake of a major spill into the Dan River in early 2014. After much debate, the legislature has moved forward on a bill that many are calling inadequate. The Coal Ash Management Plan of 2014 (SB729) is seen by many, including legislators who fought extensively to improve the bill, as not doing enough to ensure those responsible for spills and contaminations are held responsible.¹⁷³ Representative Pricey Harrison from Guilford County, NC summed up her views stating, "We could and should have done better for the citizens of North Carolina."¹⁷⁴ Furthermore, protests aimed at state legislatures continue to be prevalent, allowing citizens exhausted by partisan politics legislative shortcomings to express their concerns. In March 2014, protestors in Florida converged on the Florida Legislature to protest the state's 'Stand Your Ground' law. The law gained national attention in the wake of the death of Trayvon Martin in 2012, with many upset that the Florida legislature has still not taken any action

¹⁷² Jan Murphy, "Corbett Wants General Assembly to Send Him Meaningful Pension Reform Before Signing the Budget," Penn Live, July 1, 2014, http://www.pennlive.com/midstate/index.ssf/2014/07/corbett_wants_general_assembly.html.

¹⁷³ Amy Adams, "Environmental Community Calls For Major Changes To North Carolina House's Coal Ash Bill," Appalachian Voices, July 1, 2014, <http://appvoices.org/2014/07/01/environmental-community-calls-for-major-changes-to-north-carolina-houses-coal-ash-bill/>.

¹⁷⁴ North Carolina League of Conservation Voters, "Not Good Enough on Coal Ash," June 6, 2014, <http://nclcv.org/news/cib/20140707/>.

to address the public's concerns.¹⁷⁵ Just as with the case of Arizona Senate Bill 1062 in the introduction of this thesis, these types of partisan politics and inactions for social change have been a driving force throughout the history of the United States for legislative reforms aimed at state legislatures.

This thesis finds that these reforms and measures taken to limit a legislature's authority, and sometimes increase that of the people, often come with unintended ramifications. Chapter one examined how term limits on state representatives can strengthen a governor's legislative reach. Chapter two analyzed the modern perception of the 17th Amendment, and how it impacts the functionality of state legislatures today. Chapter three looked closely at ballot initiatives and referendums to see how they influence the legislatures' role. The findings of each chapter illustrates that there is not uniformity in the impact of reforms to the role of state legislatures. While restructuring the role of the legislatures does influence their capabilities to a certain extent, in some situations it inadvertently allows the members of these bodies to more effectively translate the wishes and needs of their constituents into public policy. On the other hand, the effect can be harmful to their ability to effectively carry out their duty, threatening their constitutionally defined role and exhausting limited time and resources. This conclusion will analyze the findings of the three previous chapters, make suggestions for future studies that should be taken into account, and make recommendations for how reforms to state legislatures should be evaluated and monitored.

¹⁷⁵ Jonathan P. Hicks, "Hundreds Protest 'Stand Your Ground' Law in Florida," BET, March 10, 2014, <http://www.bet.com/news/national/2014/03/10/hundreds-protest-stand-your-ground-law-in-florida.html>.

Chapter 1 – Findings and Suggestions for Future Studies on Term Limits

The first chapter examined the impact of term limits on state legislatures, and the impact they have on the legislative-executive relationship in a state. As the United States moved into the 1990s, confronting “Congressional Homesteading” and the extremely high reelection rates of incumbents became a major focus, leading to the development of the Term Limits Movement.¹⁷⁶ By utilizing ballot initiatives and referendums, citizens were able to have term limits put on twenty-one state legislatures, fifteen of which are still in effect.¹⁷⁷ Today, term limits continue to be very popular with a recent poll showing that 75% of Americans would even like to see them placed on federal lawmakers.¹⁷⁸

Term limits have greatly affected the balance between legislatures and governors, by tilting the level of experience towards the executive branch. The rotation of term-limited legislators causes members to not gain the much-needed experience and involvement necessary to build strong party leadership. This impacts the expertise of committee chairs and members, increases the number of rank-and-file legislators, and influences one of the main roles of state legislatures, executive oversight. Governors and their staffs, who presumably have been involved in politics on the state level for a longer period of time, will have a significant legislative advantage over cycled representatives in regards to proposed budgets and policy.

However, there is no indication that the removal of experience in the legislative branch and a presumed increase in capability by the executive threatens the economic

¹⁷⁶ Todd Donovan, Christopher Mooney, Daniel Smith, “State and Local Politics,” Wadsworth Cengage Learning, 2011. Pg. 241.

¹⁷⁷ Donovan, “State and Local Politics.” Pg. 240.

¹⁷⁸ Lydia Saad, Gallup Politics, “Americans Call for Term Limits, End to Electoral College.” January 18, 2013, <http://www.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx>.

stability of a state. Examining economic indicators, such as state population, bond debt, unemployment rates and others for the states with term limits both prior to and after their impact, reveals that term limits have not had any direct impact on economies. Similarly, a comparative study between North Dakota (no term limits) to South Dakota (term limits), both of which have comparable demographics, could not distinguish any distinctive oscillations after South Dakota's impact year, 2000. This rejected this chapter's original hypothesis, which expected to see distinct variations in economic indicators associated with the years following term limits impact on a state. Chapter one findings illustrate a definite shift in power away from legislatures controlled by term limits; however, it does not appear that this increased gubernatorial power significantly increases influence on a state's economy.

As mentioned in the chapter, future research will be able to have a better observation of the long-term impact of term limits on state legislatures. This study is using data from states that in some cases are just a few years removed from their term limit impact year. This limits the larger view of their influence on state legislatures and economic development, and will be able to be better viewed in the future. Future studies should also look into the budget requests made by governors both before and after the impact of term limits to see how if an increase in legislative power changes the way requests are shaped. While this study looked at economic indicators to understand development, future studies could certainly include specific aspects of budgets in which requests and the amount enacted could be compared before and after term limits.

Future studies should also look at how term limits on governors affect this relationship. Today, thirty-six states have term limits on their gubernatorial offices,

including all fifteen of the states with legislative term limits.¹⁷⁹ Gubernatorial term limits vary in length and reelection capabilities, and could influence their utilization of legislative authority. Acknowledging how the different variations of term limits on legislatures and governors interrelate with one another will develop a better understanding of shifts in power within these state's executive-legislative relationship.

Chapter 2 – Findings and Suggestions for Future Studies on the 17th Amendment

Chapter two looked at the 17th Amendment to the U.S. Constitution, focusing specifically on how the views of current state legislators, and how they feel the Amendment might impact citizen involvement in their state legislatures. When the Constitution was originally ratified, it created the Senate as the representative of the states on the federal level, with U.S. senators being appointed by state legislatures. The Amendment was ratified in 1913 and mandated that all U.S. senators be elected by a popular vote.¹⁸⁰ Many citizens had supported this change since the Constitutional Convention of 1787 for two distinct reasons. Up until 1913, there had been a noticeable amount of unfilled seats in the U.S. Senate, thanks to indecisive legislatures. Delaware for example, had been unable to elect U.S. senators from March 1899 to March 1903.¹⁸¹ The second reason was corruption associated with filling the posts. There were many incidences across the nation involving claims that bribery was used by legislators to pay off state representatives in order to be elected.

The research in this chapter looked at the views and thoughts of state representatives of diverse political ideologies and examined previous research to see how

¹⁷⁹ Steffen Schmidt, "American Government and Politics Today – Texas Edition," Wadsworth Cengage Learning, 2012, Pg. 704.

¹⁸⁰ Cornell University Law School, "U.S. Constitution –17th Amendment," <http://www.law.cornell.edu/constitution/amendmentxvii> (accessed June 15, 2013).

¹⁸¹ Jay Bybee, "Ulysses at the Mast: Democracy, Federalism, and the Sirens' Song of the Seventeenth Amendment," University of Nevada, Las Vegas – William S. Boyd School of Law, 1997, Pg. 543.

political figures feel the Amendment inhibits the function of state legislatures. It was hypothesized state legislators would view the 17th Amendment as limiting the full potential of legislatures, both by taking away their impact of the federal level, and creating a detachment between them and constituent interest in their state legislatures with this loss of power. While there were variations in the research as to the extent that individuals support the 17th Amendment, there seems to be agreement between Democrats and moderate Republicans that the 17th Amendment has a necessary impact on the function of state legislatures. Interviews with current state representatives yielded similar results as well. Both Republicans and Democrats viewed the 17th Amendment as a type of political buffer, which allowed them to conduct their business without the veil of major campaign financing and special interests being on them.

This agreement was observed from legislators from various states and backgrounds, who felt that were the 17th Amendment not in effect and the duty of electing state senators still theirs, state legislatures would be even more partisan and divided, resembling their federal counterparts even more. As one representative inferred, the 17th Amendment “allows things to actually get done in the states...” Combined with research into previous works and interviews conducted, this study concluded that modern support for repeal or reform of the 17th Amendment is primarily supported by those on the extreme right of the political spectrum. Furthermore, the most adamant supports of repeal tend to be extremely conservative individuals who play a role on the federal level, not in state legislatures. Today, Republicans control twenty-seven state legislatures, which means that were the 17th Amendment not in place, at least fifty-four and a majority control seats in the Senate would belong to the GOP. Those who support repeal do so as a

political maneuver to help gain Republican legislative control on the federal level, rather than over concerns with the function of state legislatures.

As pointed out in chapter two, this study was inhibited by the difficulty in findings voter turnout records in state elections in the forty-five applicable states during state legislative elections before and after the 17th Amendment was ratified. Future studies could certainly delve deeper into records kept by state houses to see if a more accurate picture of voter turnout in this period can be drawn. This would illustrate any variation that exists amongst states, and how that correlates with the votes to ratify the amendment. Future studies should also expand upon the interviews with North Carolina and other state representatives, to get an even better understanding of current state legislator views regarding the 17th Amendment. This expansion on the interviews in this study would also help solidify the conclusion that only extreme conservatives support the overturn of the 17th Amendment.

Chapter 3 – Findings and Suggestions for Future Studies on Ballot Measures

The final chapter looked at the impact of initiatives and referendums on state legislators, and if they inhibit their role. The argument over ballot measures is a continuation of one that has been happening in this nation since it's beginning. Direct versus representative democracy, and the role that elected officials should play in that were at the core of the Federalist and Anti-Federalist's arguments. Since California's Proposition 13 passed in 1978, many scholars have argued that the initiative industry has grown into a business ran by special interest money.¹⁸² These individuals argue that while labor or corporate interest are allowed to benefit from political consultants, direct-mail firms, television campaigns, and an army of paid signature gatherers to manipulate public

¹⁸² David S. Broder, "Democracy Derailed: Initiative Campaigns and the Power of Money," Harcourt, 2000, Pg. 169.

sentiment towards their cause on ballot measures, the general public is unfairly placed at a disadvantages for causes they may support.

This study examined research conducted by Howard Ernst to view the progression of corporate interest backed measures over the three key periods of ballot initiatives in the United States. Ernst breaks down all the initiatives in these periods and whether they consisted of proposals supported or opposed by corporate interests and proposals supported or opposed by non-corporate interest, creating four possible pairings.¹⁸³ In his results we can discern that there were striking similarities across all three periods in terms of success rates and usage rates for the four possible pairings. In fact, since Proposition 13 the highest passage rate for ballot initiatives were in the pairing where neither side was represented by a labor or corporate interest. This study concludes from this that the perception of the initiatives industry since 1978, and the role that special financing plays in it has been vastly overstated.¹⁸⁴

Chapter three also looked at several specific ballot initiatives and referendums from around the United States to gain an understanding of citizen engagement in the process. Findings suggest that there is an inadequacy on behalf of the citizenry to become knowledgeable of the issues they are voting on. Polling data from specific examples illustrate a clear ignorance on their part as to the full impact of potential legislation. This has a lingering impact on state legislatures as well, who have to plan budgets, handle appropriations, and empower programs while also accounting for any adverse effects

¹⁸³ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Rowman & Littlefield, 2001, Pg. 25.

¹⁸⁴ Larry Sabato, Howard R. Ernst, Bruce A. Larson, Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America," Pg. 26.

from ballot measures. It is likely that Alexander Hamilton foresaw this issue in his 1788 speech before the Convention of New York, in which he stated:

It has been observed by an honorable gentleman, that a pure democracy, if it were practicable, would be the most perfect government. Experience has proven that no position in politics is more false than this. The ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny; their figure deformity. When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity.¹⁸⁵

Legislatures must also use limited time and resources in subsequent legislative sessions correcting the negative impacts of policies enacted through these measures. It is also concluded that referendums create opportunities for state legislatures to avoid gubernatorial review of an issue, and place the responsibility for approval on the citizenry, rather than perform their legislative duty.

Future research should build upon this study by examining how state budgets and appropriations have been impacted in states where ballot initiatives and popular referendums are allowed, specifically examining social programs before and after 1978. Analysis of specific programs would highlight any downward trends in terms of legislative support or opposition that might have stemmed from ballot measures. States should also look at how these changes to budgets and programs compare to other states with similar demographics that do not employ specific ballot measures. This would help illustrate the capacity of state legislatures to function effectively both with and without the threat of ballot initiatives and popular referendums.

¹⁸⁵ Frank Moore, ed., "American Eloquence: A Collection of Speeches and Addresses, by the Most Eminent Orators of America," D. Appleton and Company, 1858, Pg. 192.

Recommendations

There are not many indications that the partisanship and voter dissatisfaction of state legislatures, just like the national level, is going to change any time soon. Public disapproval of state legislatures remains high, with bodies like that of California maintaining a disapproval rating with likely voters in the 50-60% range.¹⁸⁶ As this dissatisfaction continues between constituents and state legislatures it will be interesting to see if voters in various states pursue an expansion of state or federal limitations on the function of state legislatures examined here, or new measures. Regardless, this study has proven that there are unintended consequences associated with these restrictions to the authority and power of state legislatures. It is essential that the citizenry and state legislatures examine measures closely prior to and after their implementation to ensure that legislatures are not being treated unfairly, or being limited in their constitutional duty.

While some measures, such as the 17th Amendment, can actually help legislatures perform their function to a much greater extent, others are not so forgiving. Term limits and ballot measures can create extra hurdles for legislatures to deal with, limiting their function beyond the initial intent. Committees in state legislatures who focus on the rules and operations of their body need to be much more proactive in monitoring the impact of such measures. Hearings and studies similar to this one should be commissioned to explore deeper into their impact and inadvertent limitations they create which could negatively impact the state as a whole. State Supreme Courts need to monitor these reforms as well, to ensure that they adhere to a state's Constitution. In the case of term

¹⁸⁶ Public Policy Institute of California, "Job Approval Ratings for California State Legislature," 2014, <http://www.ppic.org/main/dataSet.asp?i=927>.

limits for example, several state Supreme Courts saw fit to strike down initiatives limiting the amount of years representatives could serve.

As previously mentioned, this is not a new debate in the United States. The role of representation in our democracy, and the extent to which self-determination plays into that, has been a point of contention since the nation was founded. As citizens continue to become disgruntled with the ineffectiveness of their state legislatures, reforms and changes to the range of their power may very well be necessary. As Madison said in Federalist 49, "...the people are the only legitimate fountain of power..." Nevertheless, this is not an admission for reform to an extent of complete direct democracy. Measures limiting control of state legislatures must be monitored to ensure that unintended, negative impacts on the role of legislators, the people, and each state's welfare are exposed before they can do harm.

BIBLIOGRAPHY

Introduction References

- Bernick, Bob Jr. "7.7% Pay Hike is Pushed for Utah's Legislators." Deseret News. November 9, 2007. <http://www.deseretnews.com/article/695226164/77-pay-hike-is-pushed-for-Utahs-legislators.html?pg=all>.
- Carcamo, Cindy. "Arizona Gov. Jan Brewer Vetoes So-Called Anti-Gay Bill." LA Times. February 26, 2014. <http://articles.latimes.com/2014/feb/26/nation/la-na-nn-arizona-gay-brewer-20140226>.
- Donovan, Todd; Mooney, Christopher; Smith, Daniel. "State and Local Politics." Wadsworth Cengage Learning. 2011. Pg. 230.
- Hakim, Danny. "New York Legislators Pushing to Raise Their Pay." The New York Times. February 10, 2008. <http://www.nytimes.com/2008/02/10/nyregion/10raise.html>.
- Levine, Mike. "Ex-Arizona Gov. Janet Napolitano: State's Legislature 'Out of Touch.'" ABC News. February 26, 2014. <http://abcnews.go.com/blogs/politics/2014/02/ex-arizona-gov-janet-napolitano-states-legislature-out-of-touch/>.
- Little, Thomas H.; Ogle, David B. "The Legislative Branch of State Government: People, Process, and Politics." ABC-CLIO. 2006. Pg. 36.
- National Archives, "17th Amendment to the U.S. Constitution: Direct Election of U.S. Senators," <http://www.archives.gov/legislative/features/17th-amendment/>.
- National Conference of State Legislatures. "Full-And Part-Time Legislatures." 2009. <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>.
- National Conference of State Legislatures. "Legislative Session Length." <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx>.
- National Conference of State Legislatures. "Number of Legislators and Length of Terms in Years." 2013. <http://www.ncsl.org/research/about-state-legislatures/number-of-legislators-and-length-of-terms.aspx>.
- North Carolina General Assembly. "How Much Do Legislators Get Paid?" <http://www.ncleg.net/ncgainfo/educational/funfacts/legpay.html>.
- North Carolina General Assembly. "When is the General Assembly in Session?" <http://www.ncleg.net/gascripts/Help/KnowledgeBase/viewItem.pl?nID=35>.

Mann, Thomas E.; Ornstein, Norman J. "It's Even Worse Than It Looks: How the American Constitutional System Collided With the New Politics of Extremism." Basic Books. 2012. Pg. 126.

Schoichet, Catherine E; Abdullah, Halimah. "Arizona Gov. Jan Brewer vetoes controversial anti-gay bill, SB 1062." CNN Politics. February 26, 2014. <http://www.cnn.com/2014/02/26/politics/arizona-brewer-bill/>.

Chapter 1 References

American Enterprise Institute. "House Reelection Rate and Congressional Job Approval." December 2012. <http://www.aei-ideas.org/2012/07/breaking-news-congress-is-unpopular/7-17-12-political-report-house-reelection-rate/>

Bandow, Doug. "Real Term Limits: Now More Than Ever," CATO Institute, March 28, 1995. <http://www.cato.org/pubs/pas/pa-221.html>

Berman, David. "Effects of Legislative Term Limits in Arizona," Joint Project on Term Limits, 2004.

Bianton, Dana. "Fox News Poll: 78 Percent Favor Term Limits on Congress," FoxNews, September 3, 2010. <http://www.foxnews.com/politics/2010/09/03/fox-news-poll-percent-favor-term-limits-congress/>

Birkhead, Nathaniel. Uriarte, Gabriel. Bianco, William. "The Impact of State Legislative Term Limits on the Competitiveness of Congressional Elections." American Politics Research, 2010

Day, Jonathan. Boeckelman, Keith. The Impact of Legislative Term Limits on State Debt: Increased Spending, Flat Revenue." Politics and Policy, 2012.

Donovan, Todd. Mooney, Christopher. Smith, Daniel. "State and Local Politics." Wadsworth Cengage Learning, 2011.

Farmer, Rick. Mooney, Christopher. Powell, Richard. Green, John. Eds. "Legislating without Experience: Case Studies in State Legislative Term Limits." Lexington Press, 2007.

Greenhouse, Linda. "High Court Blocks Term Limits for Congress in a 5-4 Decision," The New York Times, May 23, 1995. <http://www.nytimes.com/1995/05/23/us/high-court-blocks-term-limits-for-congress-in-a-5-4-decision.html?pagewanted=all&src=pm>

Hunter, Donald. Vickers, Fred. "Term Limits Produce Changes." The Council of State Governments, 2001.

Kousser, Thad. "Term Limits and the Dismantling of State Legislative Professionalism." Cambridge University Press, 2005

Kurts, Karl. Cain, Bruce. Niemi, Richard. Eds. "Institutional Change in American Politics: The Case of Term Limits." University of Michigan Press, 2007.

Mann, Thomas and Orenstein, Norman. "Want to End Partisan Politics? Here's What Won't Work – and What Will." The Washington Post, May 17, 2012
http://www.washingtonpost.com/opinions/want-to-end-partisan-politics-heres-what-wont-work--and-what-will/2012/05/17/gIQA5jqcWU_story.html

Mann, Thomas and Oenstein, Norman. "It's Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism." Basic Books, 2012.

Manuel, Kate. "The Jurisprudence of Justice John Paul Stevens: The Constitutionality of Congressional Term Limits and the Presidential Line Item Veto." Congressional Research Service, May 18, 2010. <http://www.fas.org/sgp/crs/misc/R41246.pdf>

Michigan Department of Technology. Management and Budget, "Budget Process," <http://www.michigan.gov/budget/0,4538,7-157-11462-34950--,00.html> (accessed March 3, 2013).

National Conference of State Legislatures. "Joint Project on Term Limits." <http://www.ncsl.org/legislatures-elections/legisdata/joint-project-on-term-limits.aspx> (accessed April 15, 2013).

National Conference of State Legislatures. "Legislative Term Limits: An Overview." <http://www.ncsl.org/legislatures-elections/legisdata/legislative-term-limits-overview.aspx>

National Conference of State Legislatures. "The Term Limited States." NCSL, June 2009. <http://www.ncsl.org/legislatures-elections/legisdata/chart-of-term-limits-states.aspx>

Newton-Small, Jay. "Term Limits: No Magic Pill for Washington's Woes," Time, February 23, 2010. <http://www.time.com/time/politics/article/0,8599,1967192,00.html>

Oklahoma State Bond Advisor. "State of Oklahoma Bonded Indebtedness." http://www.ok.gov/bondadvisor/State_Debt/ (accessed February 26, 2013)

Open Secrets. "Reelection Rates Over the Years." The Center for Responsive Politics. <http://www.opensecrets.org/bigpicture/reelect.php>

Rosenbaum, David. "Term Limits Draw States' Big Fish to Big Pond, Congress," The New York Times, April 4, 2000. <http://www.nytimes.com/2000/04/04/us/term-limits-draw-states-big-fish-to-big-pond-congress.html?pagewanted=all&src=pm>

Saad, Lydia. "Americans Call for Term Limits, End to Electoral College." Gallup Politics, January 18, 2013. <http://www.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx>

U.S. Term Limits. "State Term Limits." <http://termlimits.org/term-limits/state-term-limits/> (accessed February 24, 2013).

Chapter 2 References

Bernhard, William; Sala, Brian R. "The Remaking of an American Senate: The 17th Amendment and Ideological Responsiveness." *Journal of Politics*, 2006.

Biographical Directory of the United States Congress. "CLARK, William Andrews, (1839-1925)." <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000454>.

Brandes Crook, Sara; Hibbing, John R. "A not-so-distant Mirror: The 17th Amendment and Congressional Change." *American Political Science Review*, 1997.

Bybee, Jay. "Ulysses at the Mast: Democracy, Federalism, and the Sirens' Song of the Seventeenth Amendment." University of Nevada, Las Vegas – William S. Boyd School of Law, 1997.

Cillizza, Chris. "The least productive Congress Ever." *The Washington Post*. July 17, 2013. <http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/17/the-least-productive-congress-ever/>.

Clopton, Zachary D.; Art, Steven E. "The Meaning of the Seventeenth Amendment and a Century of State Defiance." *Northwestern Law Review*, 2012.

Cooke, Charles C.W. *National Review*. "Repeal the 17th Amendment," <http://www.nationalreview.com/articles/341894/repeal-17th-amendment-charles-c-w-cooke>.

Cornell University Law School. "U.S. Constitution – Article I." <http://www.law.cornell.edu/constitution/articlei>.

Cornell University Law School. "U.S. Constitution – 17th Amendment." <http://www.law.cornell.edu/constitution/amendmentxvii>

Dubin, Michael J. "Party Affiliations in the State Legislatures: A Year-by-Year

- Summary, 1796–2006.” McFarland, 2007
- Gailmard, Sean; Jenkins, Jeffery A. “Agency Problems, the 17th Amendment, and Representation in the Senate,” Midwest Political Science Association, 2009.
- Grimes, Alan P. “Democracy and the Amendments to the Constitution.” Lexington Books, 1978.
- Hamilton, Alexander; Madison, James; Jay, John. “The Federalist Papers.” Penguin Books, 1961.
- Haynes, George H. “The Election of Senators.” Henry Holt, 1906.
- Haynes, George H. “The Senate of the United States: Its History and Practice.” Boston: Houghton Mifflin, 1938.
- Jaycox, Faith. “The Progressive Era.” Facts on File, Inc., 2005.
- King, Ronald F.; Ellis, Susan. “Partisan advantage and Constitutional Change: The Case of the Seventeenth Amendment.” Studies in American Political Development, 1996.
- King, Ronald F.; Ellis, Susan. “Rules and Results The Impact of the 17th Amendment on the Composition of the U.S. Senate.” University of Michigan, 1996.
- Kochan, Donald J. “State Laws and the Independent Judiciary: An Analysis of the Effects of the Seventeenth Amendment on the Number of Supreme Court Cases Holding State Laws Unconstitutional.” Albany Law Review. 2003.
- Mahoney, Bill. “2012 Legislative Session Analysis.” New York Public Interest Research Group. 2012. <http://www.nypirg.org/media/releases/goodgov/NYPIRG%202012%20Session%20Analysis.pdf>.
- Pitkin, William H. “The Concept of Representation.” University of California Press, 1967.
- Pomper, Gerald, “Voters, Elections, and Parties: The Practice of Democratic Theory.” Transaction Publishers, 1992.
- Riley, Charles. “Repeal 17th Amendment.” CNN. July 10, 2010. <http://politicalticker.blogs.cnn.com/2010/07/10/repeal-17th-amendment/>.
- Root, Damon W. Reason. “Injustice System.” <http://reason.com/archives/2010/04/08/injustice-system/print>.

- Rothman, David J. "Politics and Power: The U.S. Senate 1869-1901." Harvard University Press, 1966.
- Schiller, Wendy. "Building Careers and Courting Constituents: U.S. Senate Representation 1889-1924." *Studies in American Political Development*, 2006.
- Shira Toeplitz, "Michigan: Pete Hoekstra Not a Fan of 17th Amendment," Roll Call, August 13, 2012, <http://www3.atr.rollcall.com/michigan-pete-hoekstra-not-a-fan-of-17th-amendment/>.
- Skocpol, Theda; Williamson, Vanessa. "The Tea Party and the Remaking of Republican Conservatism." New York: Oxford University Press, 2011
- Stewart, Charles. "Responsiveness in the Upper Chamber: The Constitution and the Institutional Development of the Senate." University of Illinois Press, 1992.
- Stewart, Charles; Schiller, Wendy. MIT Political Science. "The Effects of the 17th Amendment on the Party Composition of the Senate: A Counterfactual Analysis." MIT, 2011.
- Stewart, Charles; Schiller, Wendy. MIT Political Science. "The 100th Anniversary of the 17th Amendment (Direct Election of Senators): A Promise Unfulfilled?" *Issues in Governance Studies*, 2013.
- The American Presidency Project. "Voter Turnout in Presidential Elections: 1828 – 2008." <http://www.presidency.ucsb.edu/data/turnout.php>.
- The Campaign to Restore Federalism. "Repeal the 17th Amendment." <http://www.restorefederalism.org/2009/03/repeal-17th.html>.
- Wawro, Gregory J.; Schickler, Eric. "Filibuster: Obstruction and Lawmaking in the U.S. Senate." Princeton: Princeton University Press, 2006.
- Wirls, Daniel. "Regionalism, Rotten Boroughs, Race and Realignment: The Seventeenth Amendment and the Politics of Representation." *Studies in American Political Development*, 1999.

Chapter 3 References

- Associated Press. "Amendment One: North Carolina Votes on Gay Marriage." Politico. May 8, 2012, <http://www.politico.com/news/stories/0512/76037.html>.
- Barker, Vanessa. "The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders." Oxford. 2009.

- Broder, David S. "Democracy Derailed: Initiative Campaigns and the Power of Money." Harcourt. 2000.
- Broder, David S. "Do Ballot Initiatives Undermine Democracy?" Cato Policy Report. 2000 <http://www.iandrinstitute.org/New%20IRI%20Website%20Info/I&R%20Research%20and%20History/I&R%20Studies/Cato%20-%20Policy%20Forum%20Do%20Ballot%20Initiatives%20Undermine%20Democracy%20IRI.pdf>.
- Cronin, Thomas E. "Direct Democracy: The Politics of Initiative, Referendum, and Recall." Harvard University Press. 1989.
- Dickson, Susan. "Orange Says 'No,' State Says 'Yes.'" The Carrboro Citizen. May 10, 2012. <http://www.carrborocitizen.com/main/2012/05/10/orange-says-no-state-says-yes/>.
- The Economist, "Direct Democracy: Origin of the Species," April 20, 2011, <http://www.economist.com/node/18548119>.
- General Assembly of North Carolina. "Chapter 51: Marriage." http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_51/Article_1.html.
- General Assembly of North Carolina. "Senate Bill 514." <http://www.ncleg.net/sessions/2011/bills/senate/pdf/s514v5.pdf>.
- Henry, Patrick. "Shall Liberty or Empire Be Sought." Patrick Henry Center. 1788. <http://www.patrickhenrycenter.com/Speeches.aspx#EMPIRE>.
- Initiative & Referendum Institute. "State-by-State List of Initiative and Referendum Provisions." http://www.iandrinstitute.org/statewide_i&r.htm.
- Jenson, Tom. "Amendment One Still up 14 Points in N.C." Public Policy Polling. May 1, 2012. http://www.publicpolicypolling.com/pdf/2011/PPP_Release_NC_050112.pdf.
- Lester, Margot C. "Biz Owners: Amendment One Could Harm Business, Economic Development." The Carrboro Citizen. April 19, 2012. <http://www.carrborocitizen.com/main/2012/04/19/biz-owners-amendment-one-could-harm-business-economic-development/>.
- Martin, Jackson Turner. "The Antifederalists: Critics of the Constitution, 1781-1788." The University of North Carolina Press. 1961.
- Myers, Denis. "Question 3." Reno News & Review. July 10, 2014. <http://www.newsreview.com/reno/question-3/content?oid=14009924>.

- National Conference of State Legislatures. "Drafting The Initiative Proposal." <http://www.ncsl.org/research/elections-and-campaigns/drafting-initiatives.aspx>.
- National Conference of State Legislatures. "Initiative, Referendum and Recall." <http://www.ncsl.org/research/elections-and-campaigns/initiative-referendum-and-recall-overview.aspx>.
- National Conference of State Legislatures. "Preparation of a Ballot Title and Summary." January 2002, <http://www.ncsl.org/research/elections-and-campaigns/preparation-of-a-ballot-title-and-summary.aspx>.
- Oltman, Samantha. "N.C.'s Amendment 1 Doesn't Just Screw Over Gay People." Mother Jones. May 8, 2012. <http://www.motherjones.com/mojo/2012/05/amendment-1-north-carolina-gay-people>.
- Rossiter, Clinton, ed. "The Federalist Papers." Signet Classic. 1961.
- Sabato, Larry; Ernst, Howard R; Larson, Bruce A., Eds., "Dangerous Democracy?: The Battle Over Ballot Initiatives in America." Rowman & Littlefield. 2001.
- Schrag, Peter. "Paradise Lost: California's Experience, America's Future." University of California Press. 1998.
- Shen, Lucinda. "United Church of Christ Challenges Gay Marriage Ban." Daily Tarheel. June 23, 2014. <http://www.dailytarheel.com/article/2014/06/united-church-of-christ-challenges-gay-marriage-ban>.
- Vogel, Ed. "Tax Battle in Nevada Shaping up for 2014." Las Vegas Review-Journal. June 17, 2013. <http://www.reviewjournal.com/news/government/tax-battle-nevada-shaping-2014>.
- Waters, M. Dane. "A Brief: The History of the Initiative and Referendum Process in the United States." The I and R Institute. <http://www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Quick%20Facts/History%20of%20I&R.pdf>.
- Waters, M. Dane. "Do Ballot Initiatives Undermine Democracy?" Cato Policy Report. 2000. <http://www.iandrinstitute.org/New%20IRI%20Website%20Info/I&R%20Research%20and%20History/I&R%20Studies/Cato%20-%20Policy%20Forum%20Do%20Ballot%20Initiatives%20Undermine%20Democracy%20IRI.pdf>.

Conclusion References

Adams, Amy. "Environmental Community Calls For Major Changes To North Carolina

- House's Coal Ash Bill." *Appalachian Voices*. July 1, 2014.
<http://appvoices.org/2014/07/01/environmental-community-calls-for-major-changes-to-north-carolina-houses-coal-ash-bill/>.
- Broder, David S. "Democracy Derailed: Initiative Campaigns and the Power of Money." Harcourt. 2000.
- Bybee, Jay. "Ulysses at the Mast: Democracy, Federalism, and the Sirens' Song of the Seventeenth Amendment." University of Nevada, Las Vegas – William S. Boyd School of Law. 1997.
- Cornell University Law School. "U.S. Constitution –17th Amendment." <http://www.law.cornell.edu/constitution/amendmentxvii> (accessed June 15, 2013).
- Donovan, Todd; Mooney, Christopher; Smith, Daniel. "State and Local Politics." Wadsworth Cengage Learning. 2011.
- Hicks, Jonathan P. "Hundreds Protest 'Stand Your Ground' Law in Florida." BET. March 10, 2014. <http://www.bet.com/news/national/2014/03/10/hundreds-protest-stand-your-ground-law-in-florida.html>.
- Moore, Frank, ed. "American Eloquence: A Collection of Speeches and Addresses, by the Most Eminent Orators of America." D. Appleton and Company. 1858.
- Murphy, Jan. "Corbett Wants General Assembly to Send Him Meaningful Pension Reform Before Signing the Budget." Penn Live. July 1, 2014.
http://www.pennlive.com/midstate/index.ssf/2014/07/corbett_wants_general_assembly.html.
- North Carolina League of Conservation Voters. "Not Good Enough on Coal Ash." June 6, 2014. <http://nclcv.org/news/cib/20140707/>.
- Public Policy Institute of California. "Job Approval Ratings for California State Legislature." 2014. <http://www.ppic.org/main/dataSet.asp?i=927>.
- Saad, Lydia. Gallup Politics. "Americans Call for Term Limits. End to Electoral College." January 18, 2013, <http://www.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx>.
- Sabato, Larry; Ernst, Howard R.; Larson, Bruce A., Eds. "Dangerous Democracy?: The Battle Over Ballot Initiatives in America." Rowman & Littlefield. 2001.
- Schmidt, Steffen. "American Government and Politics Today – Texas Edition." Wadsworth Cengage Learning. 2012.

Curriculum Vitae

Tyler H. Aiken was born in Asheville, North Carolina on April 7, 1989. He graduated from the University of North Carolina at Chapel Hill in May 2011 with a bachelor's degree in Political Science and Peace, War, and Defense (PWAD), with a minor in History. During the summer of 2010, Aiken interned for Congressman Heath Shuler representing North Carolina's 11th congressional district. While at UNC, Aiken served as a representative to the Student Congress. As a member of the legislative branch of the UNC Student Government he sat on the Rules and Judiciary Committee. After graduation, Aiken joined the staff of U.S. Senator Kay Hagan of North Carolina in Washington, D.C., where he currently works as a Legislative Correspondent.